

EXHIBIT E



Policing First Amendment Activities

Day 1

Module Number: 08

Interactions with the Press

Instructor Guide



Policing First Amendment Activities

Module 8 – Interactions with the Press

MODULE # 8 SYNOPSIS

Date Prepared: xx/xx/xx

Date Reviewed / Revised: xx/xx/xx

Prepared By: xxxxxxxxxxxxxxxxxxxxxxxxx

Reviewed/Approved By: xxxxxxxxxxxxxxxxxxxxxxxxx

This module will provide the participant with knowledge of their role while interacting with members of the press during First Amendment Activities.

Method of Instruction: Lecture / discussion / question and answer

Time Allocated: 1 hour

Training Need: To provide NYPD Recruits with an understanding of ways to balance First Amendment freedoms with the need to ensure community safety

Terminal Learning Objective: At the completion of this module, participants will understand how to interact with members of the press at a First Amendment Activity

Learning Outcomes:

1. Explain how to treat members of the press.

Required Reading:

- First Amendment to the United States Constitution
- P.G. 200-02 *Mission, Vision, and Values of the New York City Police Department*
- P.G. 208-20 “Turnover” Arrests
- A.G. 304-21 *When a Member of Service Encounters an Individual Observing, Photographing, and/or Recording Police Activity*
- P.G. 212-49 *Incidents Involving Members of the Press*
- P.G. 212-72 *Guidelines for Uniformed Members of Service Conducting Investigations Involving Political Activities*
- P.G. 213-03 *Rapid Mobilizations*
- P.G. 213-05 *Duties at an Unusual Disorder*
- P.G. 213-10 *Emergency Mobilization of Off Duty Personnel*
- P.G. 213-11 *Policing Special Events/Crowd Control*
- P.G. 213-15 *Duties and Responsibilities at Special Events*
- P.G. 213-20 *Response to First Amendment Activities*
- Legal Bureau Bulletin Vol. 50, No. 1 *Rights of Observers to Record Police Officers*

Instructional Resources Required:

- PowerPoint projector
- Computer with monitor
- Classroom seating

Evaluation Strategies:

- Observation of the level and quality of classroom participation.

References:



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United States Constitution; NYS Penal Law; NY Civil Rights Law; NYC Administrative Code; NYPD Patrol Guide

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Lesson Outcome

NYPD

- Explain the First Amendment's purpose and importance
- Explain what generally has to occur in order to ensure people can engage in lawful First Amendment activity
- Explain the role of a police officer at First Amendment activities
- Explain ways to balance First Amendment freedoms while ensuring community safety
- List options available to officers when encountering offenses at First Amendment activities
- List additional Departmental resources available to officers when policing First Amendment activities
- List the different officers assignments associated with First Amendment activities
- Explain how to treat members of the press

Learning Outcomes:

- Explain how to deal with members of the press.

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Learning Outcome #1

Explain how to treat members of the press.

Right to Lawfully Observe and/or Record

NYPD

- New York Civil Rights Law § 79-P
- New York City Administrative Code § 25-189
- Promoting police accountability and transparency
- Promoting First Amendment Rights

Differences

NYPD

- Private Citizen/ General Member of the Public
 - Gathers content for private or public use
- Member of the Press
 - Gathers and report content for the purpose of broadcasting, publishing, printing, etc.
 - May have visible identification and/or carry professional equipment
 - Mayor's Office of Media and Entertainment (MOME) Press Credential
 - Press card issued by the City of New York

Definitions

Right to Lawfully Observe and/or Record

In accordance to with First Amendment, New York Civil Rights Law §79-P and New York City Administrative Code §25-189, individuals have a right to lawfully observe and/or record police activity (detentions, searches, arrests, use of force, etc.) in public areas (streets, sidewalks, parks, etc.) and private property in which the individual has a legal right to be present (buildings, lobbies, workplaces, or individual's own property, or other private property where the individual has permission to be). The right to observe and/or record police activity can be limited only by reasonable time, place, and manner restrictions for specific reasons such as the safety of officers, public safety, or the arrest of the individual recording.

All individuals retain the basic Rights to Lawfully Observe and/or Record in accordance to the First Amendment, New York Civil Rights Law §79-P and

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New York City Administrative Code §25-189. Depending on what possible credentials that individual may possess, they may be granted more rights.

Private Citizen/ Public

An individual who gathers content for their private or public use. This individual is not under arrest or in the custody of law enforcement.

Member of the Press

An individual who gathers, reports, or licenses news or content, for the purpose of publishing, broadcasting, or cablecasting articles, commentaries, books, photographs, video, film, or audio by electronic, print, or digital media such as radio, television, newspapers, magazine, wire, books, and the Internet, including but not limited to an employee of a newsgathering organization, independent contractor, freelancer, or a self-employed person. The individual may have visible identification as a member of the press by displaying distinctive clothing, labeling, insignias, or logos and/or carry professional equipment such as cameras, lights, microphones, or audio recorders, as well as engaging in journalistic activities such as photographing, recording (video or audio), live streaming or broadcasting, interviewing, or notetaking. Members of the press may also carry press passes issued by the City of New York or by other jurisdictions or government agencies. Press passes do not need to be issued by the City of New York to be valid. These indicia are not exclusive, and a person need not exhibit every one of them to be considered a journalist or member of the press.

Mayor's Office of Media and Entertainment (MOME) Press Credential

A City of New York Press Card issued by MOME's Press Credential Office which allows the bearer to pass NYPD/city official lines and attend official City-government sponsored events open to the press.

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Members of the Department Will Not

NYPD

- When an individual is solely observing or recording, officers will not
 - Intentionally prevent, or attempt to prevent, an individual from recording police activities or any member of service;
 - Threaten, intimidate, or otherwise discourage an observer from recording police activities;
 - Command an individual to cease recording when an individual is authorized to do so under law;
 - Stop, seize, search, summons, or arrest an individual solely because such individual recorded police activities;
 - Seize property or instruments used by an individual to record police activities;
 - Delete or seize recorded images of police activity from an individual's recording device, unless authorized by law, and/or
 - Copy a recording of police activity without consent of the individual who made the recording

Members of the Department Will Not Arrest When

NYPD

- An general member of the public is solely conducting one or more of these actions:
 - Taking photographs, videotaping, or making a digital recording;
 - Requesting or making note of officer's shield numbers or names;
 - Criticizing the police or objecting to police activity;
 - Refusing to leave the area; and/or
 - Using curse words or vulgar speech

Members of the Department Will Not

In all circumstances, when an individual, who is not under arrest or in the custody of the police department, is observing or recording police action, member of the services will not:

- Intentionally prevent, or attempt to prevent, an individual from recording police activities or any member of service;
- Threaten, intimidate, or otherwise discourage an observer from recording police activities;
- Command an individual to cease recording when an individual is authorized to do so under law;
- Stop, seize, search, summons, or arrest an individual solely because such individual recorded police activities;
- Seize property or instruments used by an individual to record police activities;

Instructor Notes:

Recruits are reminded that if probable cause is established for trespassing and a decision is made to arrest the individual, the individual who is observing/recording will lose their right to lawfully observe/ record. However, per NY CVL 79-P, a person in custody or under arrest does not, by that status alone, forfeit the right to have any recordings of law enforcement activity, or property and equipment used to record such activity, maintained and returned to him or her.



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- Delete or seize recorded images of police activity from an individual's recording device, unless authorized by law, and/or
- Copy a recording of police activity without consent of the individual who made the recording.

Members of the service will not make arrest solely for the following reasons when an individual is exercising their rights to observe/ record”

- Taking photographs, videotaping, or making a digital recording;
- Requesting or making note of shield numbers or names of members of the service;
- Criticizing the police or objecting to police activity;
- Refusing to leave the area; and/or
- Using crude or vulgar speech.

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Obstruction of Governmental Administration (OGA)

NYPD

"A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or prevents the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved..."

Obstruction of Governmental Administration (OGA)

NYPD

- Actual physical force (i.e., touching/physically interfering with officer or suspect, by means of using a camera to obstruct officer's views)
- Intruding into the physical space necessary to perform officer functions and refusing to obey an order to move back
- Purposefully engaging in passive behavior that prevents an officers from taking enforcement action (i.e., blocking a prisoner van)

Obstruction of Governmental Administration, 2nd Degree (P.L. 195.05) – Misd.

Officers may not take enforcement actions against any individuals who sole action include exercising their right to observe and/or record at a First Amendment Activity. If the individuals acts in actual interference of officer activity, the officer may arrest the probable cause and may charge the OGA.

Intentionally obstructs, impairs or prevent the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

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To establish probable cause, actual interference with police activity is required. Examples of actual interference include but are not limited to:

- Actual physical force (touching/ physically interfering with officer or suspect, by means of using a camera to obstruct officer's views);
- Intruding into the physical space necessary to perform officer functions and refusing to obey an order to move back;
- Purposefully engaging in passive behavior that prevents an officer from taking enforcement action (blocking a prisoner van).

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What Are Their Rights?

NYPD

General Member of the Public – Right to Observe and/or Record

- May record police activity
- Cannot cross established frozen zone or police tapes
- Cannot enter and remain on private properties for the purposes of observing or recording

What Are Their Rights?

NYPD

Members of the Press

- Give access as close to activity as possible, with clear line of sight and within hearing range
- Cannot cross established frozen zones or police tapes
- Press access to private property but must leave upon request of owner or representative
- Required to leave an area of concern upon lawful police orders

What are their rights?

Private Citizen/ Public

Private citizens retain the right to observe/ record in accordance to the law. These individuals may record police activity but cannot cross established frozen zones or police tapes for the purposes of observation or recording. Private citizens cannot enter or remain on private property to which they do not have authorization to enter or remain.

Members of the Press

Members of the press will be given access as close to activity as possible, with a clear line of sight and within hearing range of an incident (unaided by electronic devices). Members of the press may record police activity but cannot cross established frozen zones or police tapes for the purposes of observation or recording. Members of press can have press

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access to demonstrations on private property and will not be arrested for criminal trespass unless an owner or representative expressly indicates the press is not permitted to enter or remain on that property. Members of the press will have access to any location where the public is permitted access.

Mayor's Office of Media and Entertainment (MOME) Press

MOME press holders retains the same rights as private citizens and regular members of the press. MOME press holders are allowed to cross police and fire lines but are not entitled to access to interior crime scenes or areas frozen for security reasons.

Additionally, in certain instances when the Department need to clear out a particular area, MOME press pass holders may not be required to leave the area of concern but will be required to move to a safe location. All other press will be required to leave the area, pursuant to a lawful order.

In response to an order to leave an area, MOME press pass holders are not required to leave the area but shall move to a safe location. At the discretion of the Incident Commander, members of the press may be directed to move to a different location where, to the fullest extent possible, they may still see and hear (unaided by any electronic device) ongoing newsworthy events and will not be subject to arrest for documenting police activity or for not leaving the general area.

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How Does This Apply to FFA

NYPD

- Follow all applicable laws and police procedures in regard to right to observe and/or record
- Everyone is allowed to record in a public space where FFA is held
- Only MOME press holders are allowed to cross police and fire lines

How does this apply to First Amendment Activity?

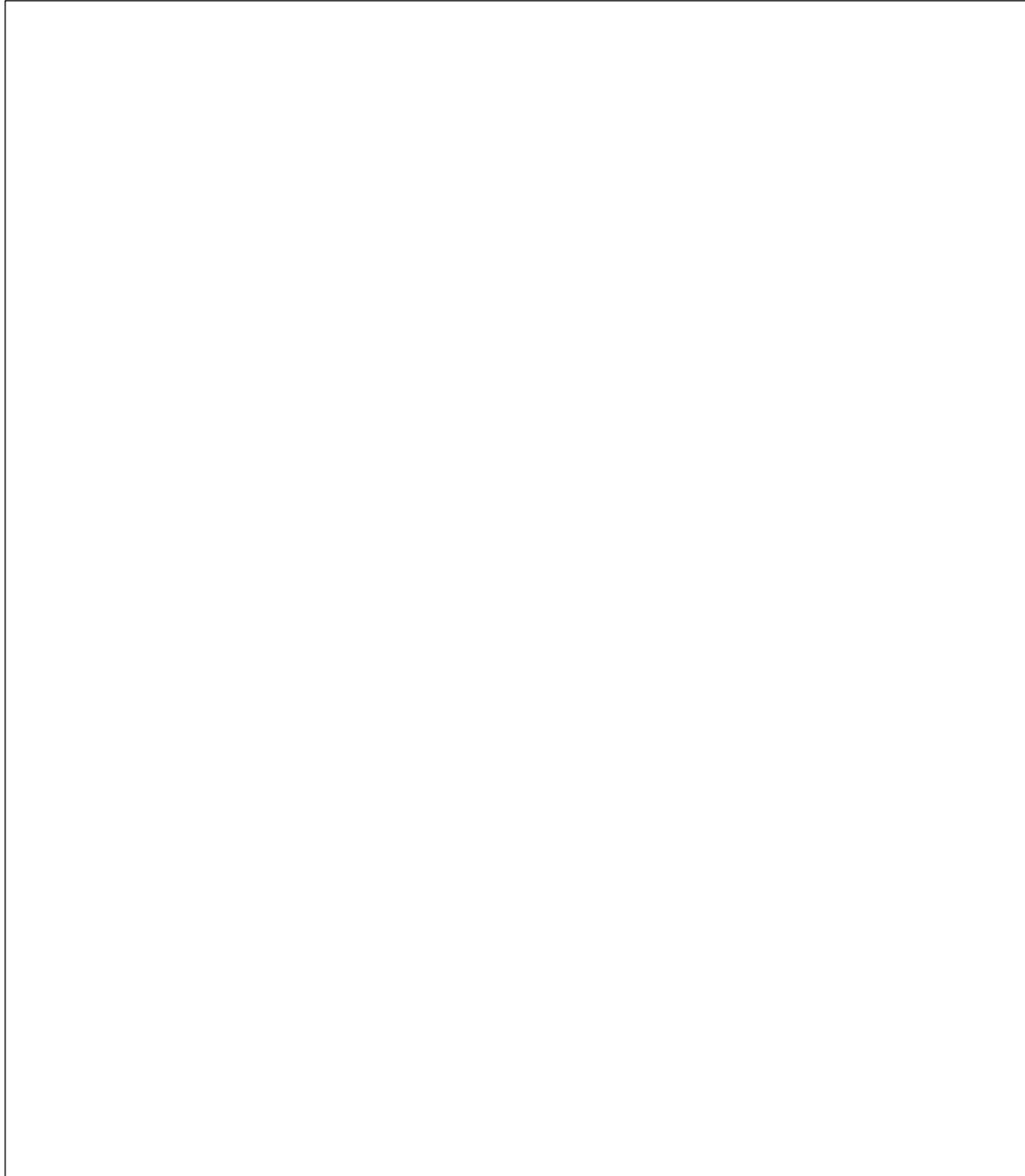
Officers will follow all applicable laws and police procedures in regards to individuals and their right to record at a First Amendment Activity. Individuals regardless of their status will be permitted in areas where First Amendment Activities are occurring to include near where crimes are being committed (unless a police line is established, then follow the proper verifications for press/MOME), and where matters of public concern are occurring, subject to reasonable time, place and manner restrictions.

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When Member of the Press are arrested for Red Light Violation

NYPD

- Arrest must be approved by either the Incident Commander or a ranking member of DCPI
- If eligible issue a Criminal Court summons on scene
- Do not seize press card, may voucher for safekeeping if individual is being processed for online arrest

When Member of the Press are arrested for Red Light Violation

If a member of the press is arrested at a First Amendment Activity demonstration, the arrest must be approved by either the Incident Commander or a ranking member from DCPI.

When possible, if the arrestee is eligible for a Criminal Court summon, the summon will be issued on scene. If the Incident Commander determines there may be health or safety risk on scene, the arrestee may be transported to an arrest processing facility or another facility as determined by the Incident Commander to complete arrest processing.

Officers will not seize a press credential under any circumstances except when the individual is placed under arrest. The officer will voucher the press credential for safekeeping, regardless of which jurisdiction issued the press credential.

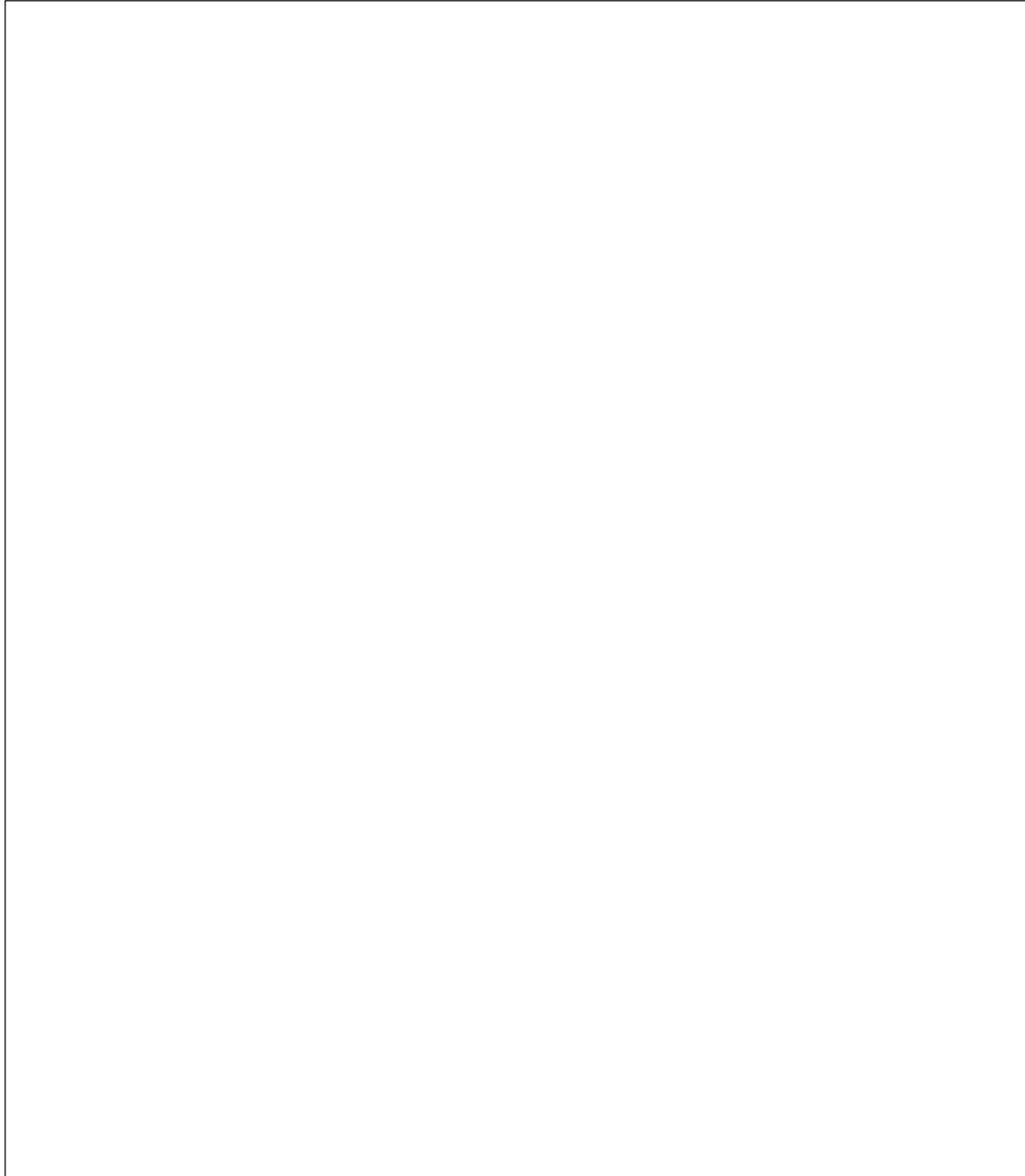
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If a government issued press credential cannot be verified on scene, officers will assume the credentials are valid by matching the credential with another form of photo identification of the individual; details given about the issuing city/agency; details given about the associated media outlet/ independent network; identifying the expiration date/ serial number. If officers have any additional inquiries, officers will contact DCPI



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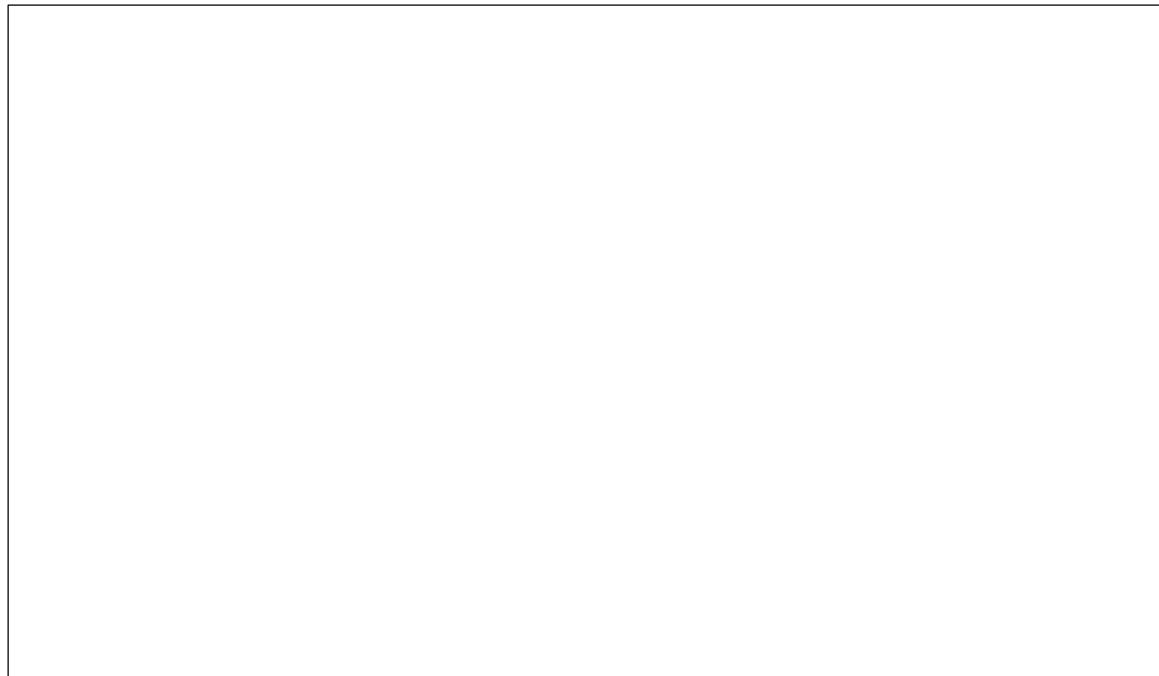


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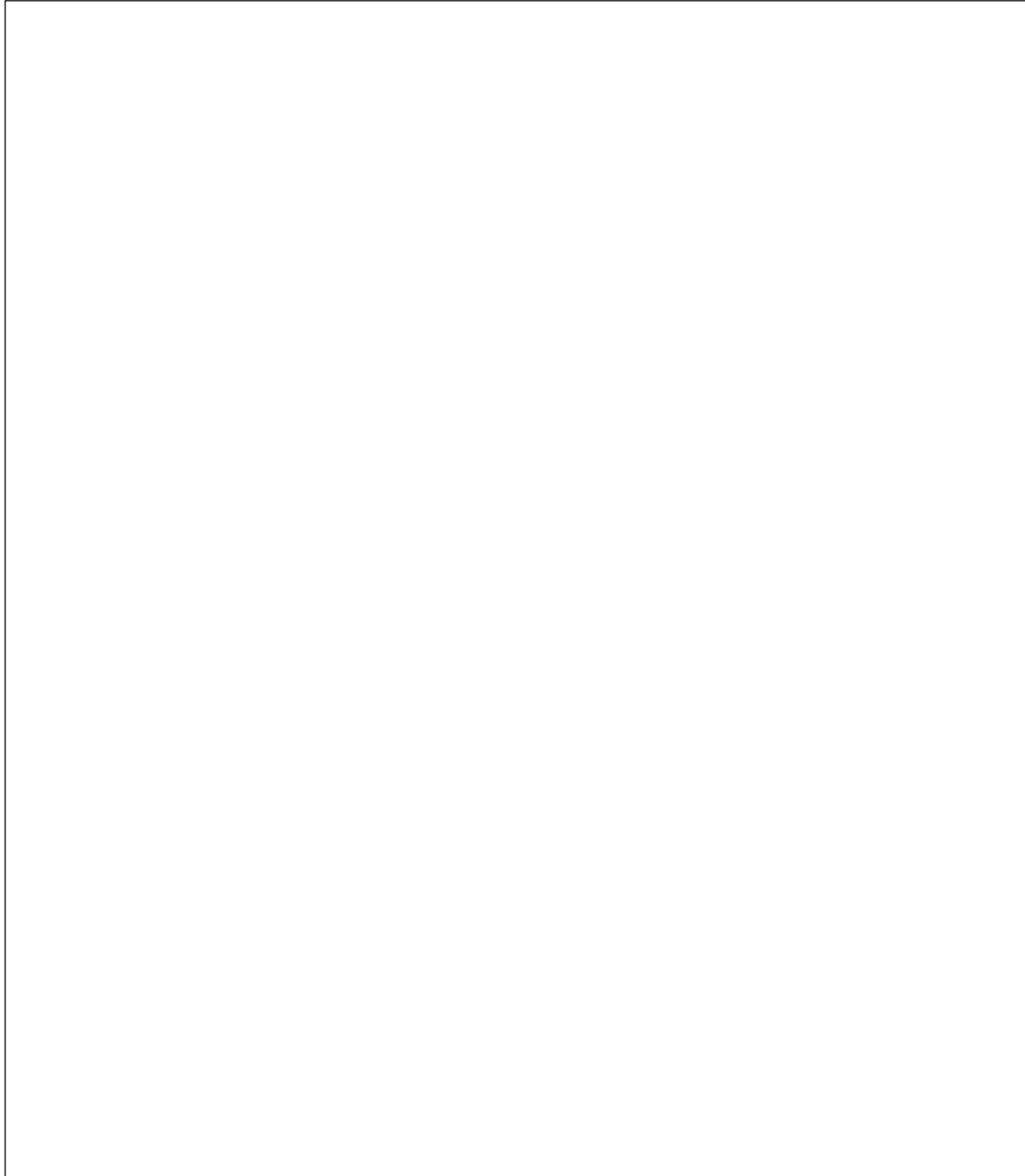


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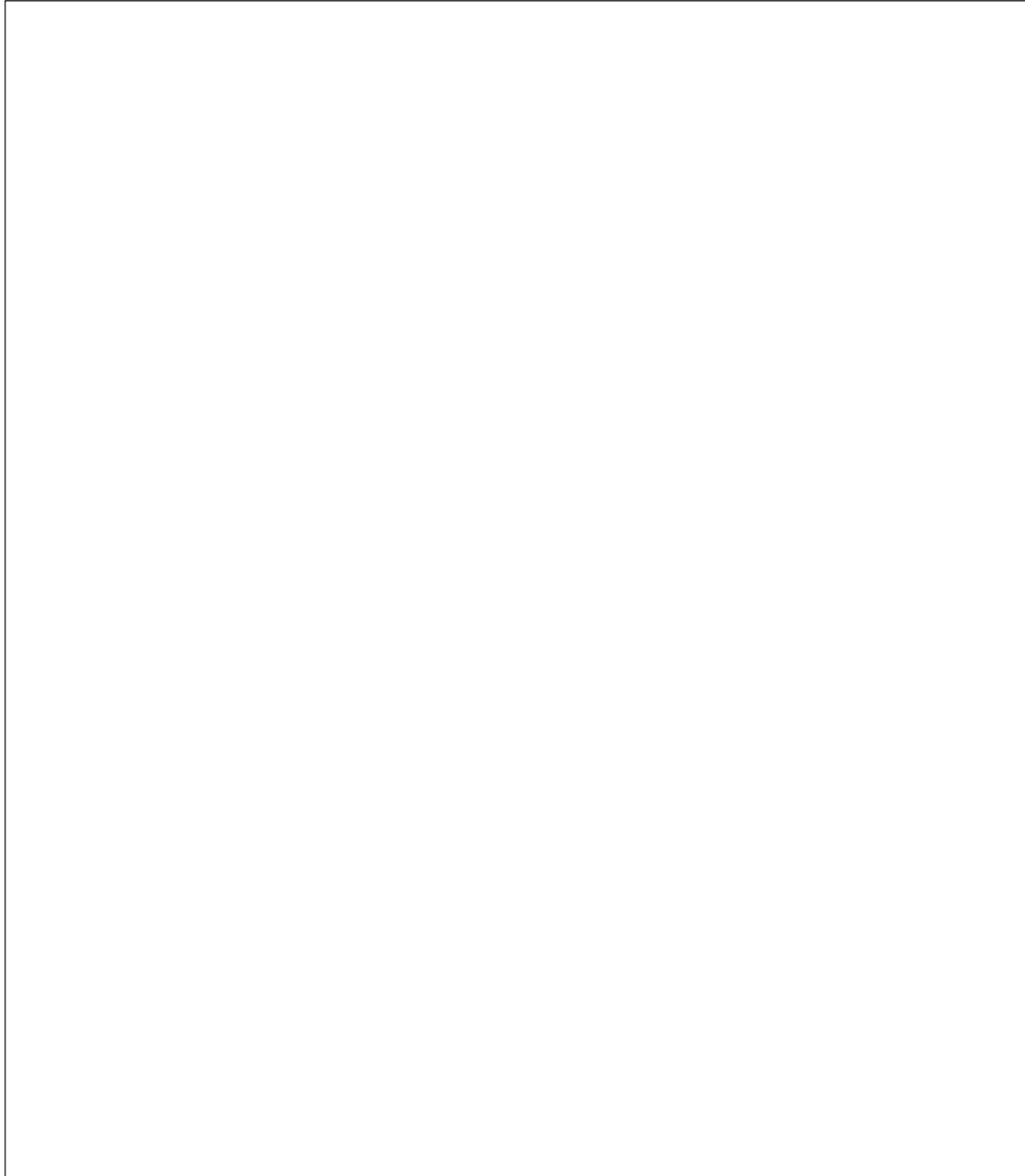
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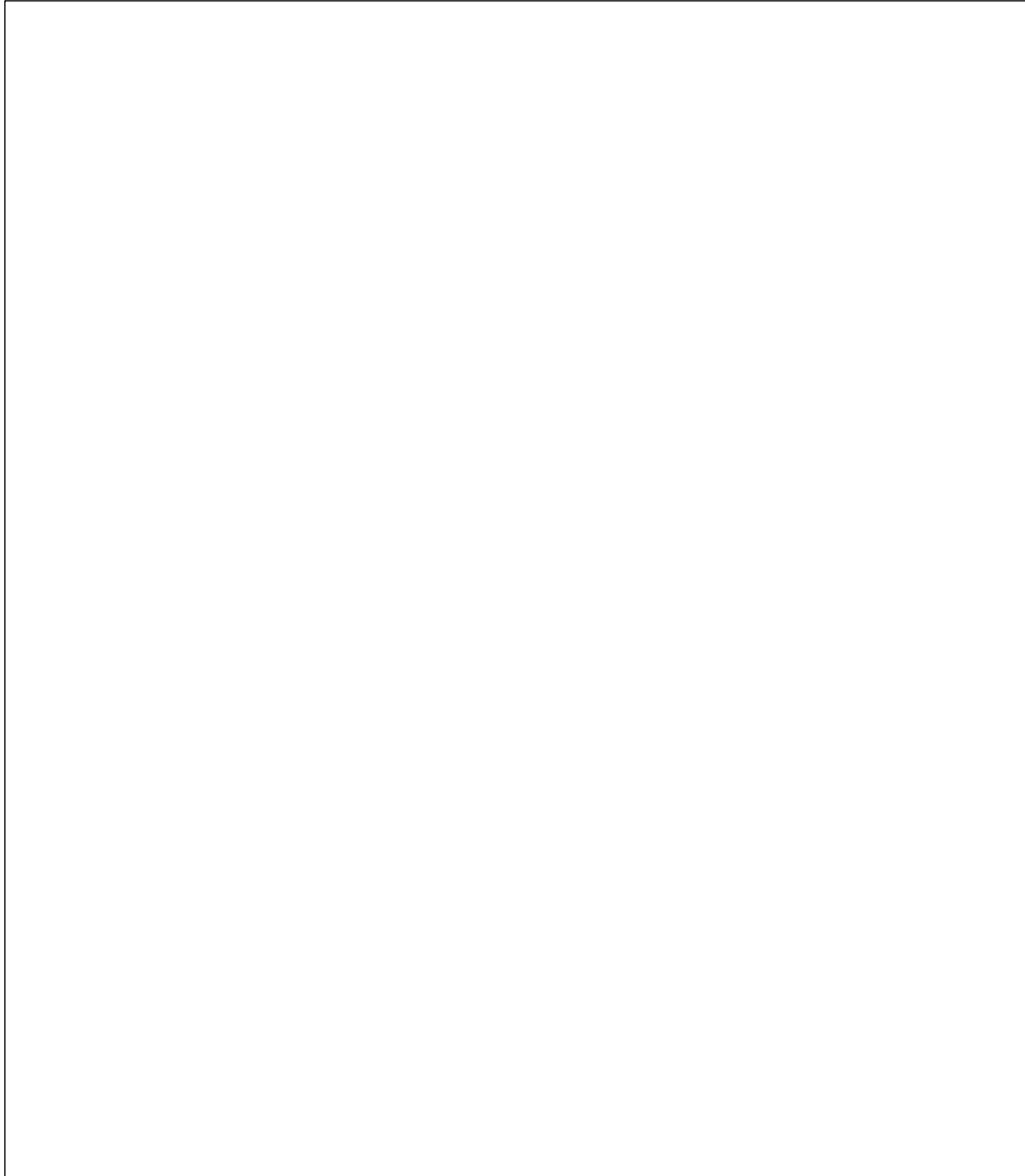
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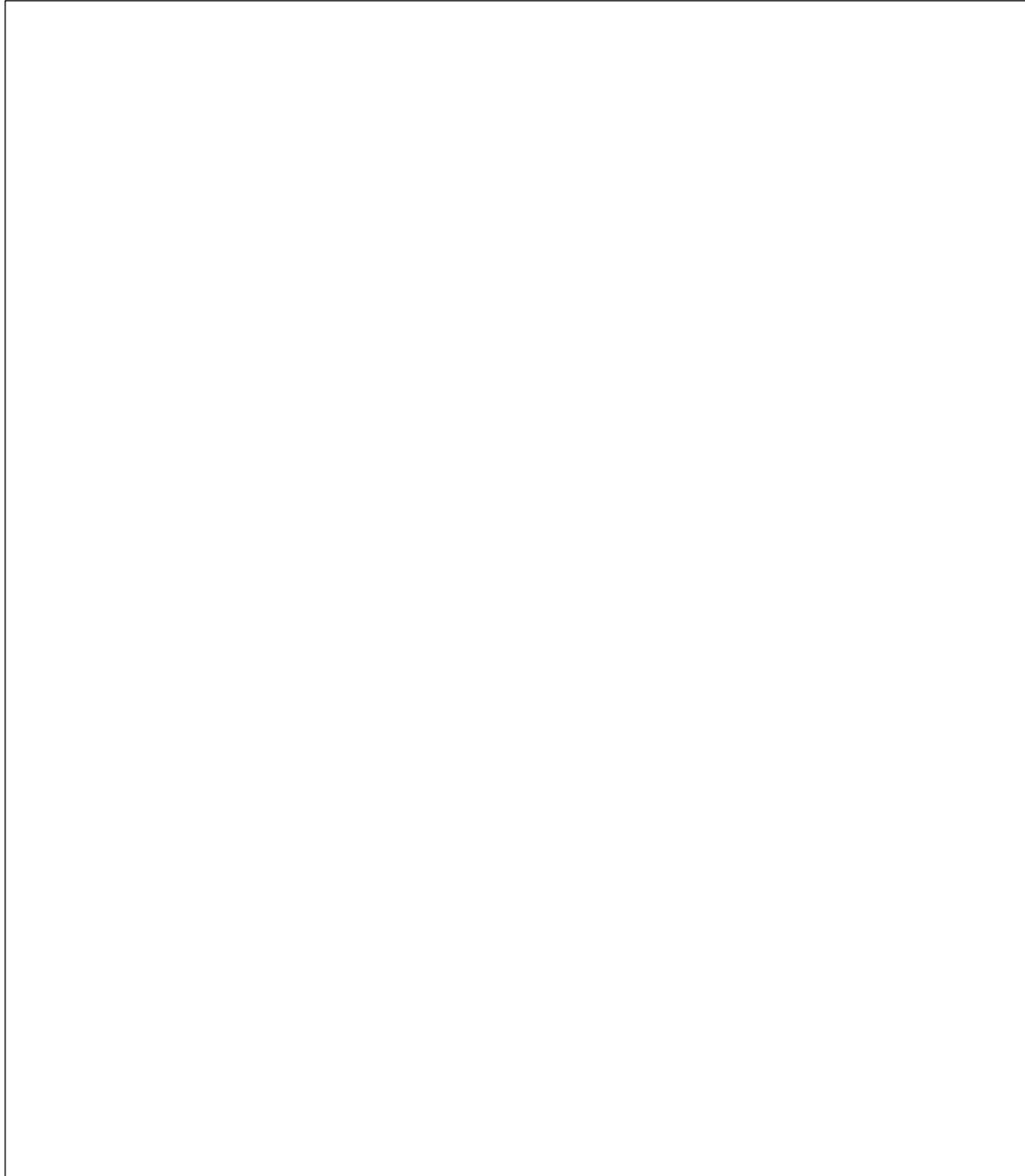
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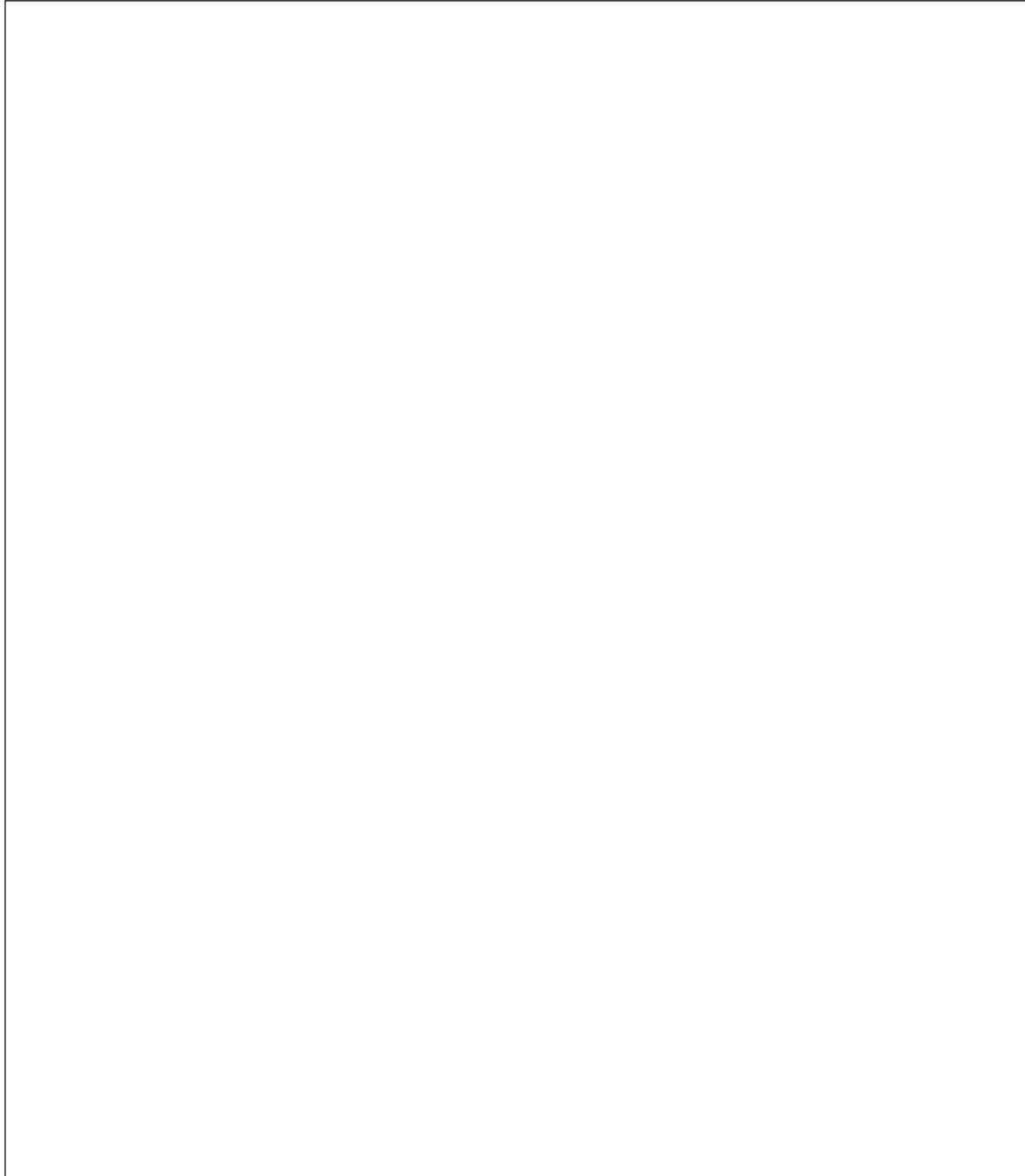
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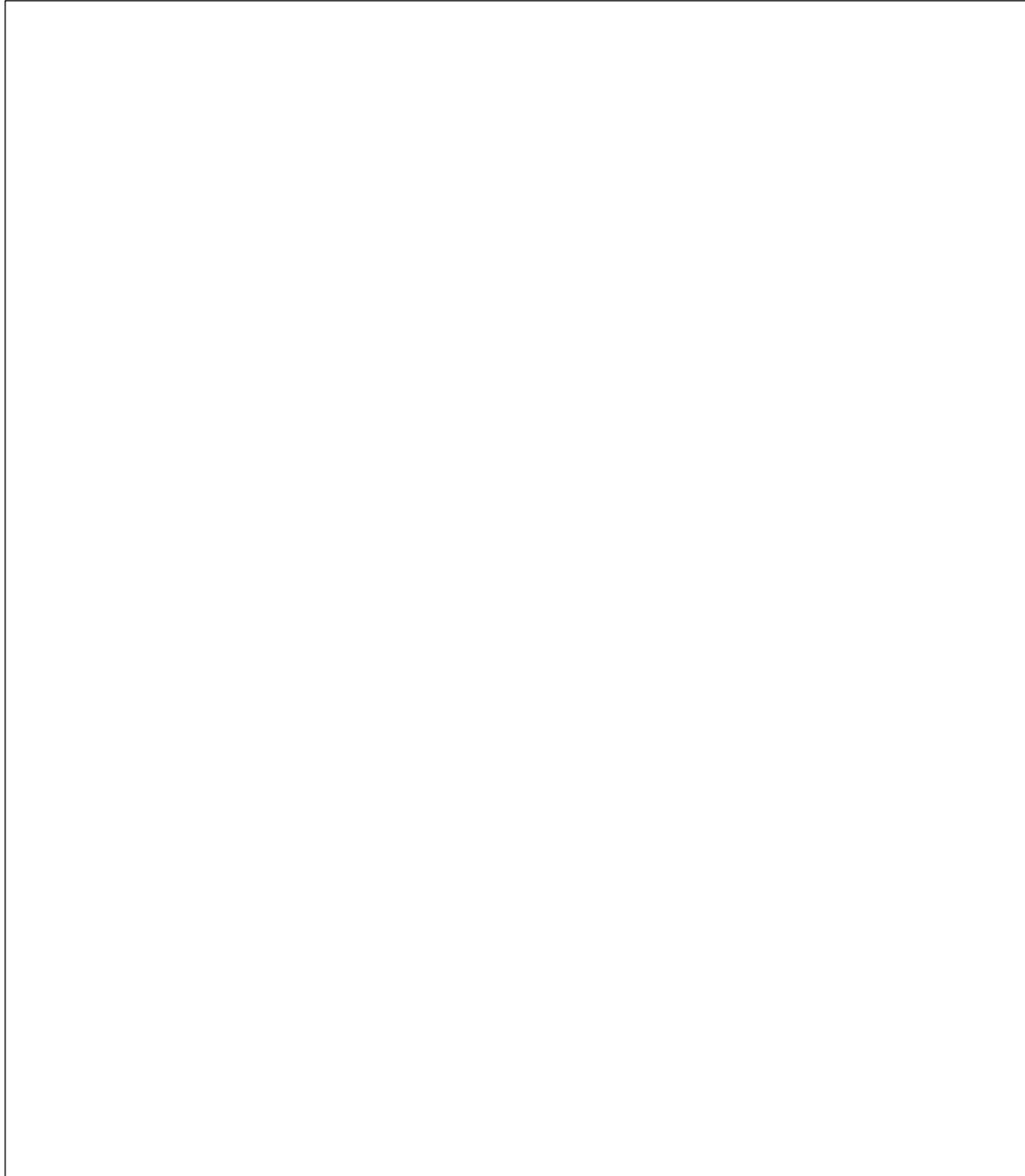
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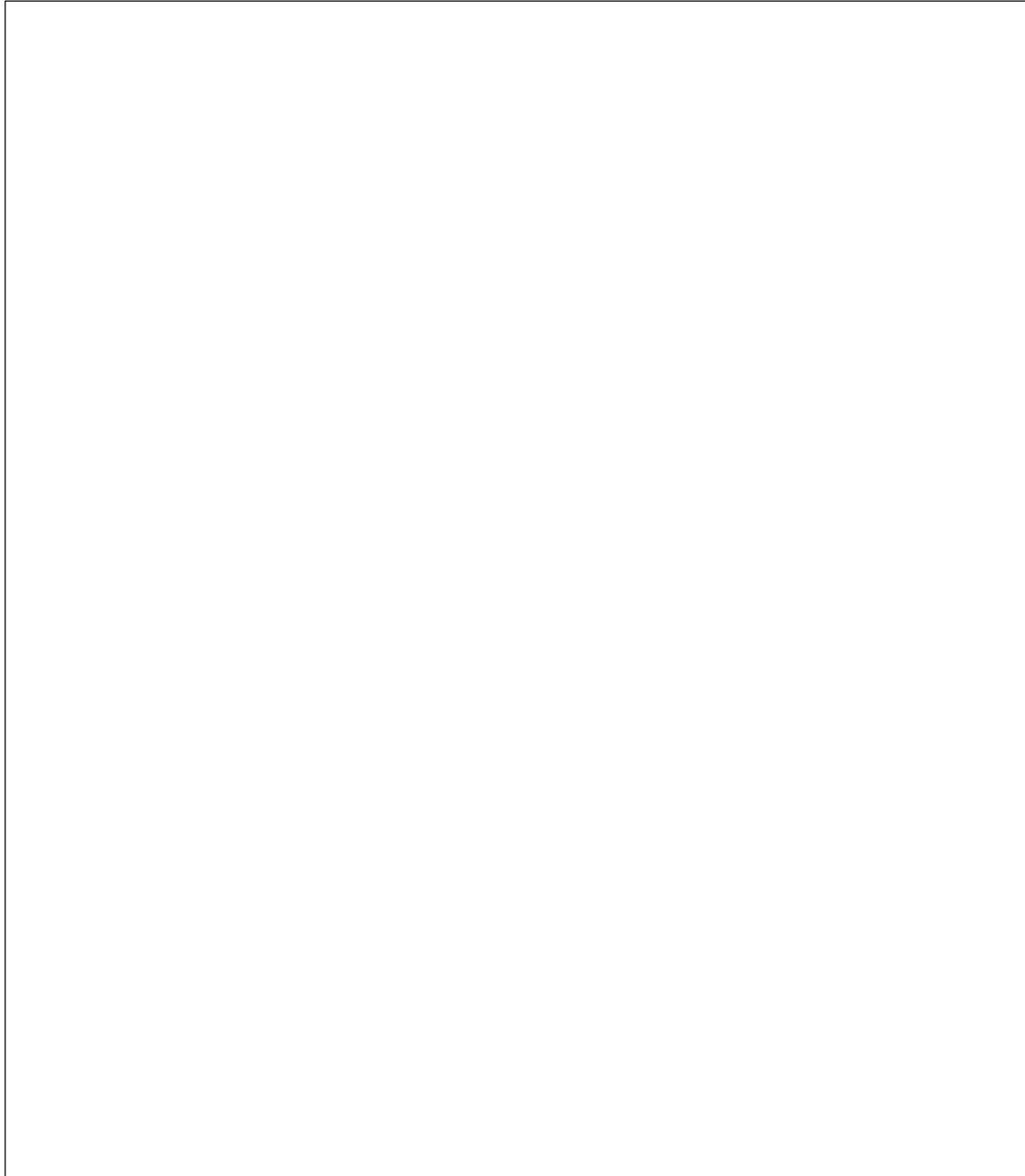
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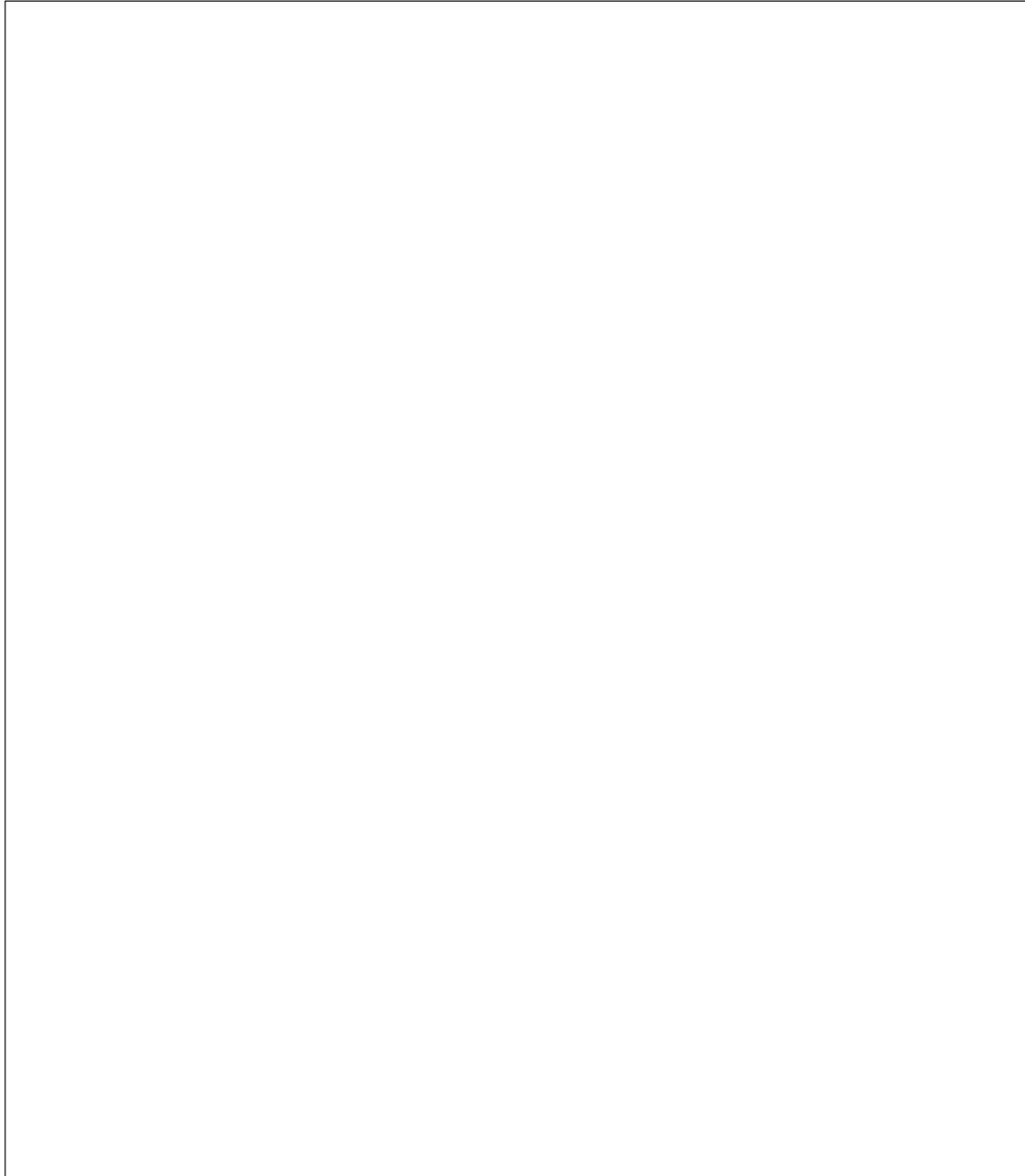
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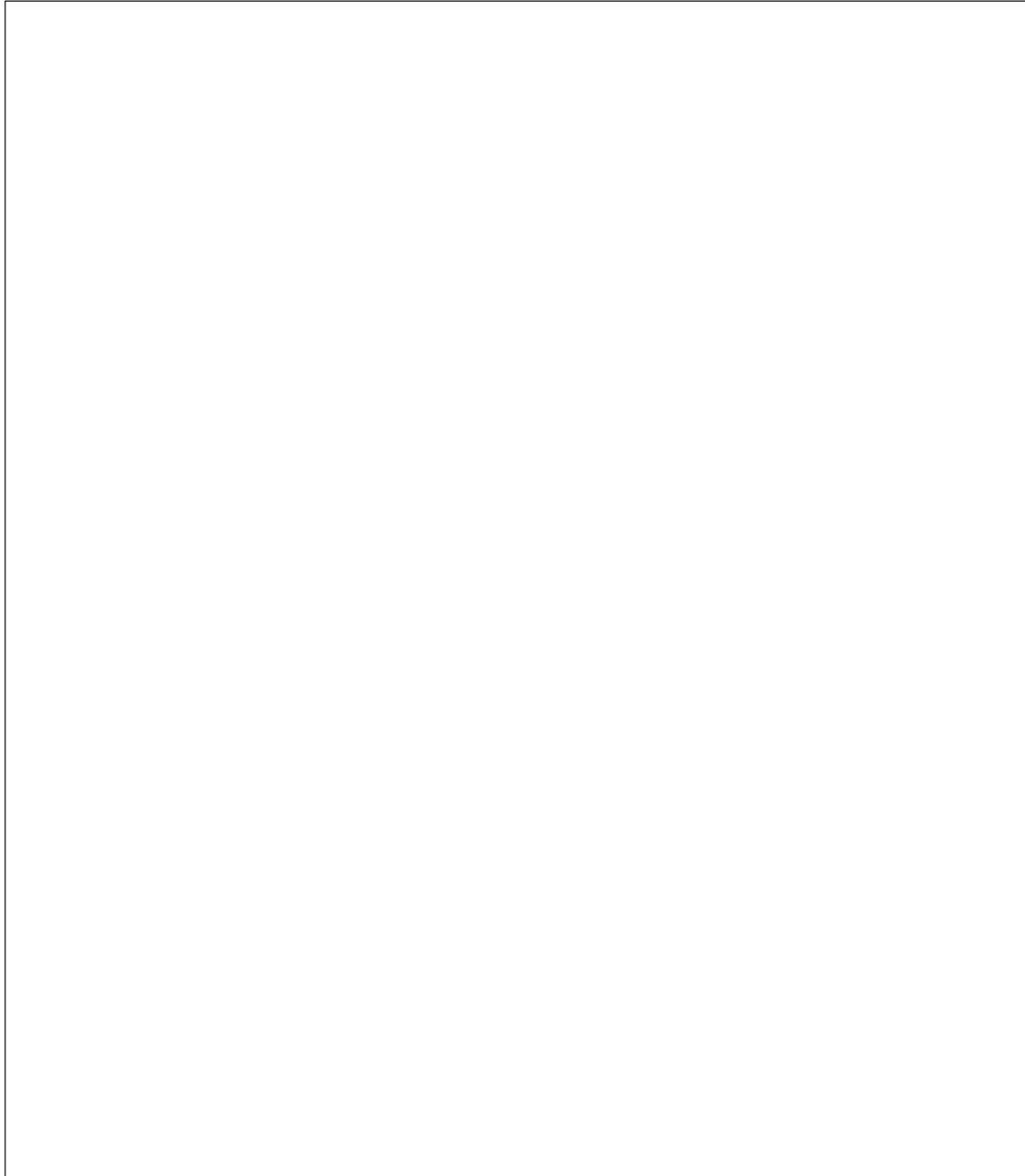
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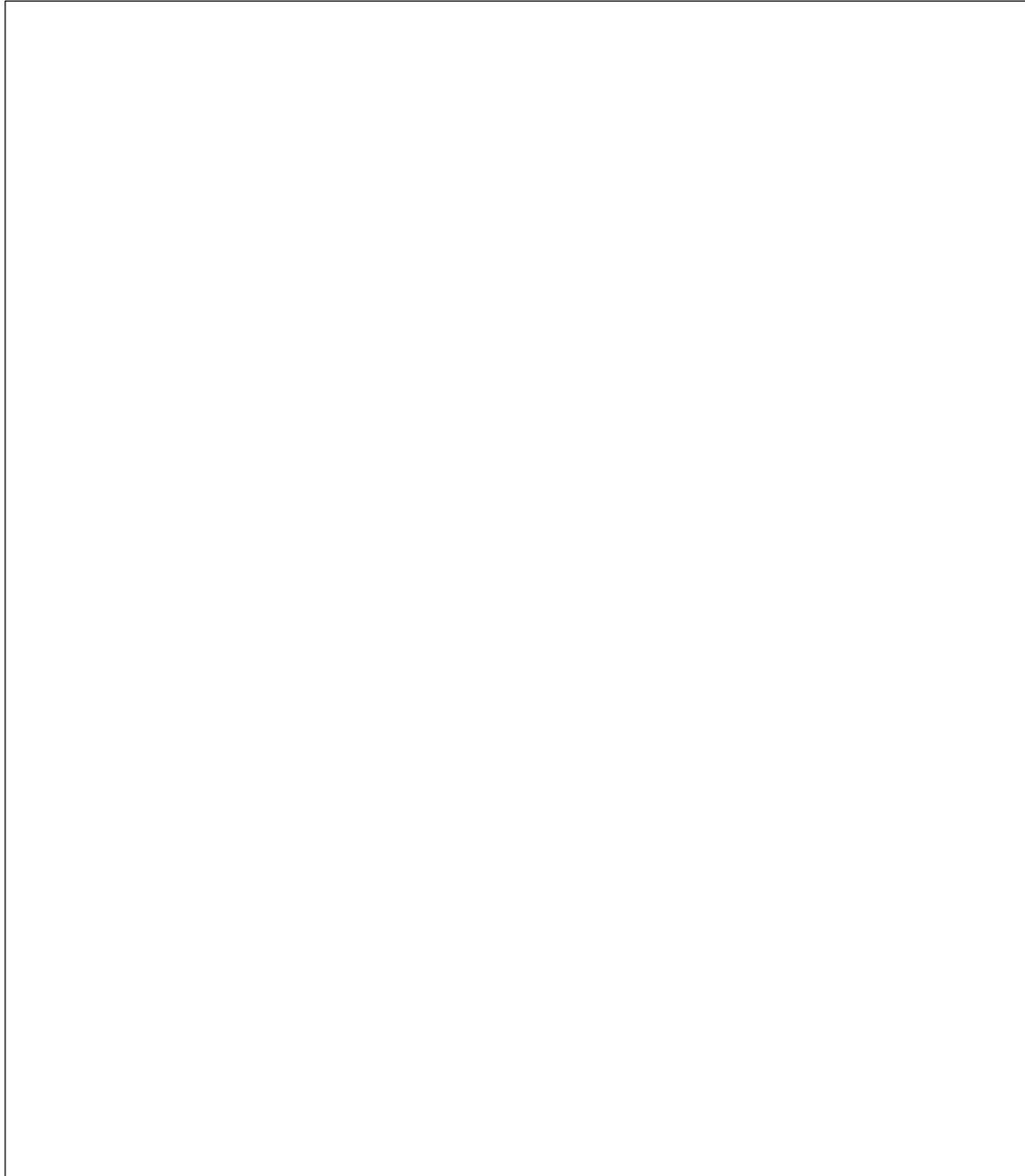
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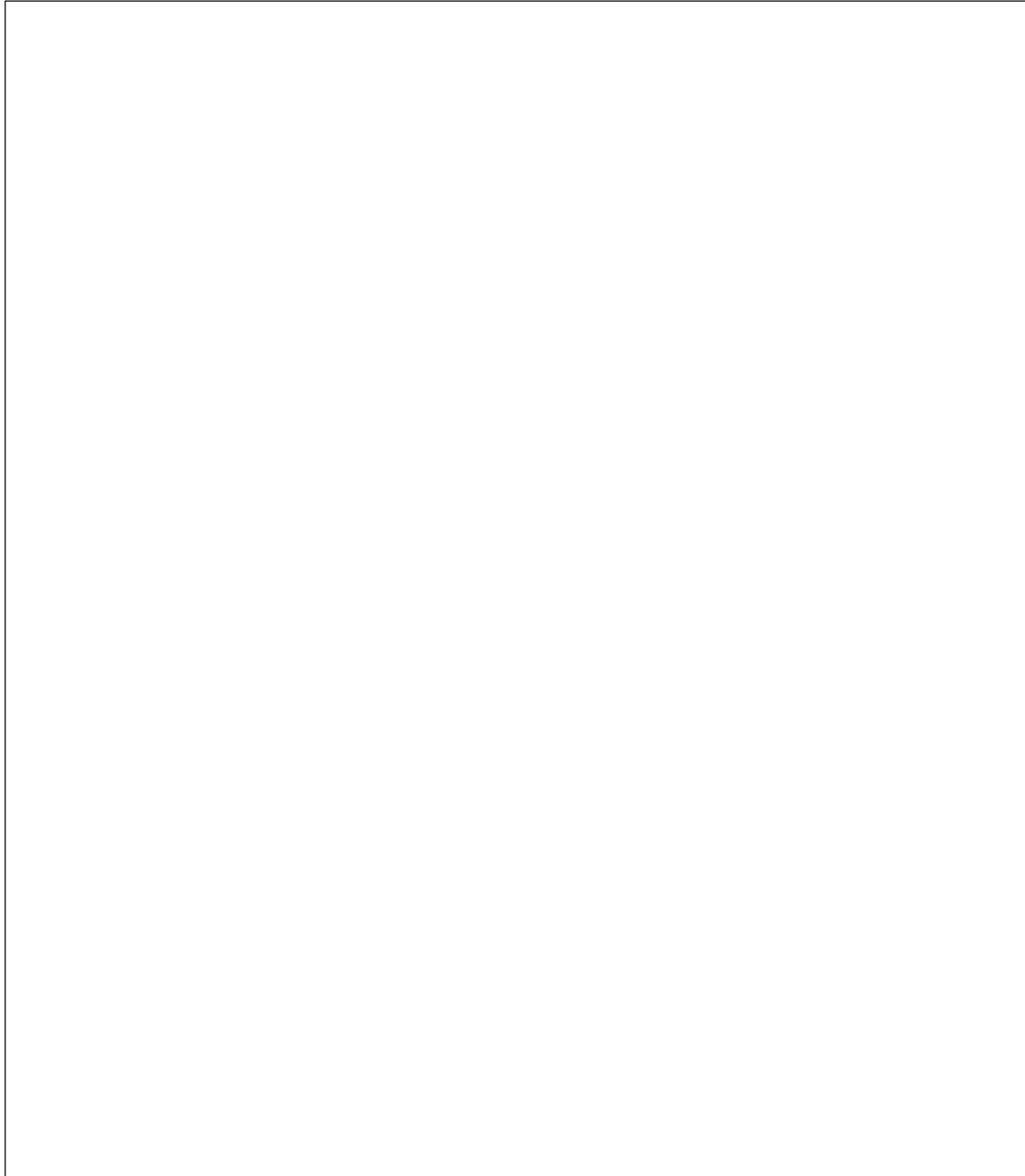
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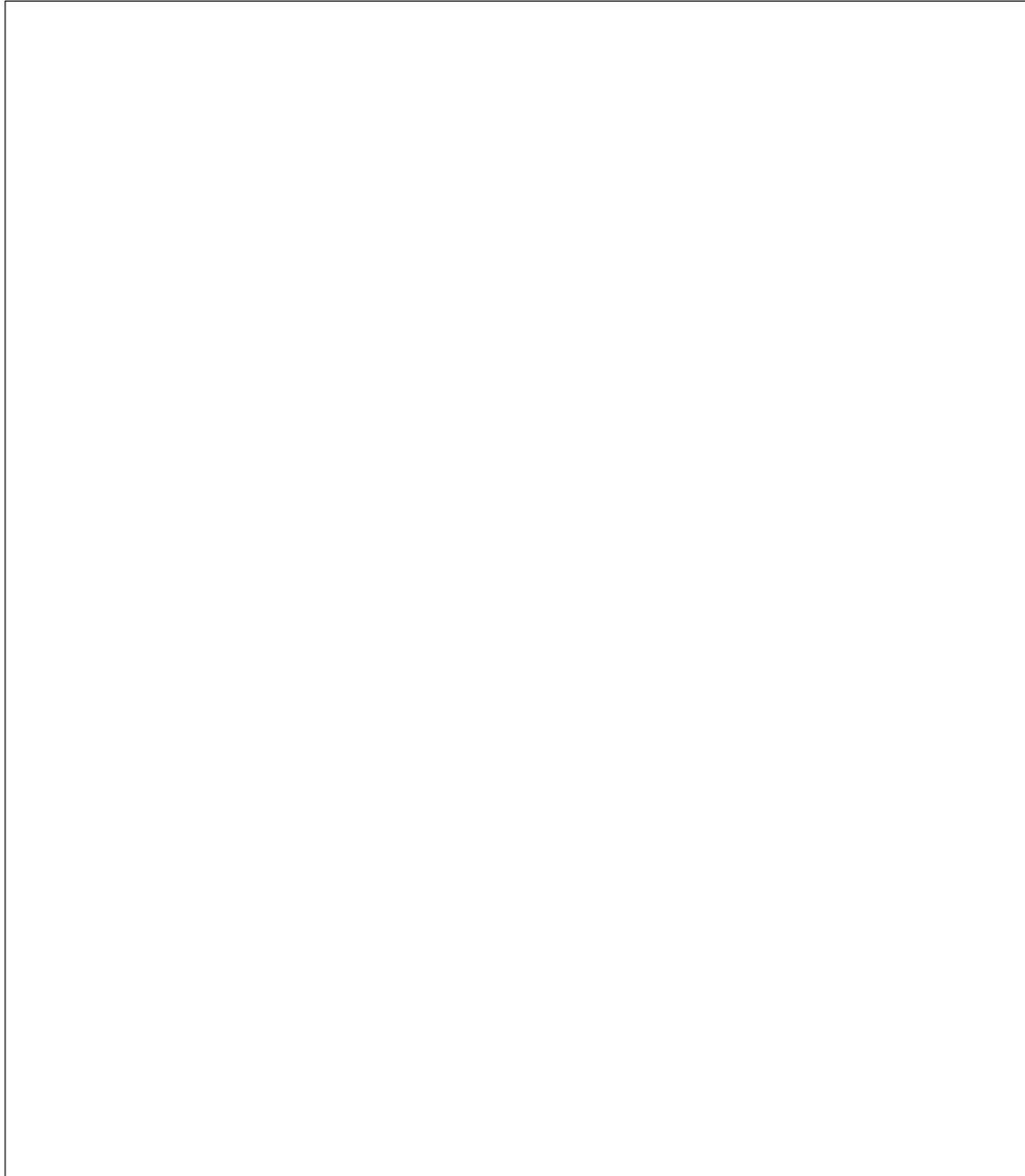
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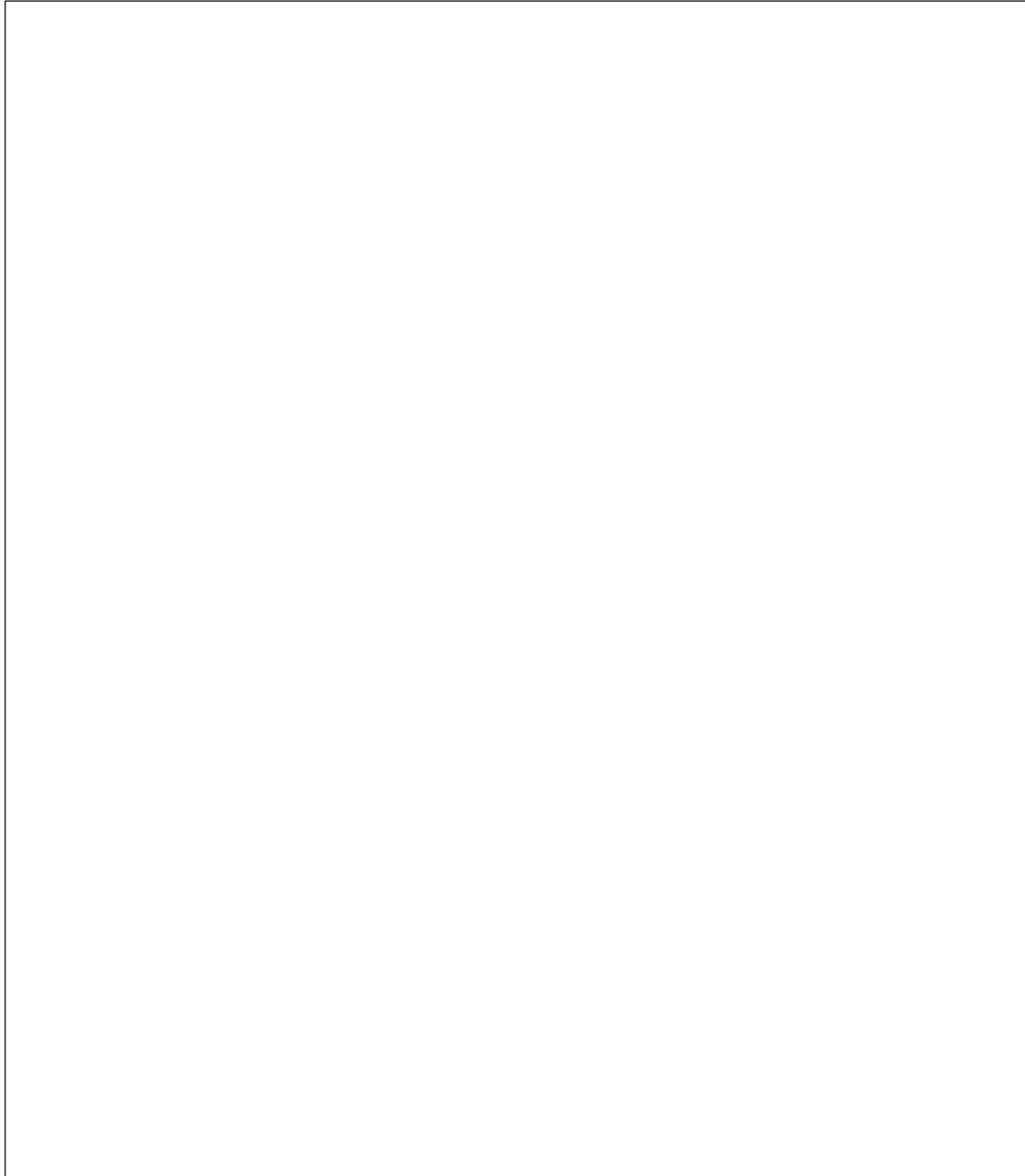
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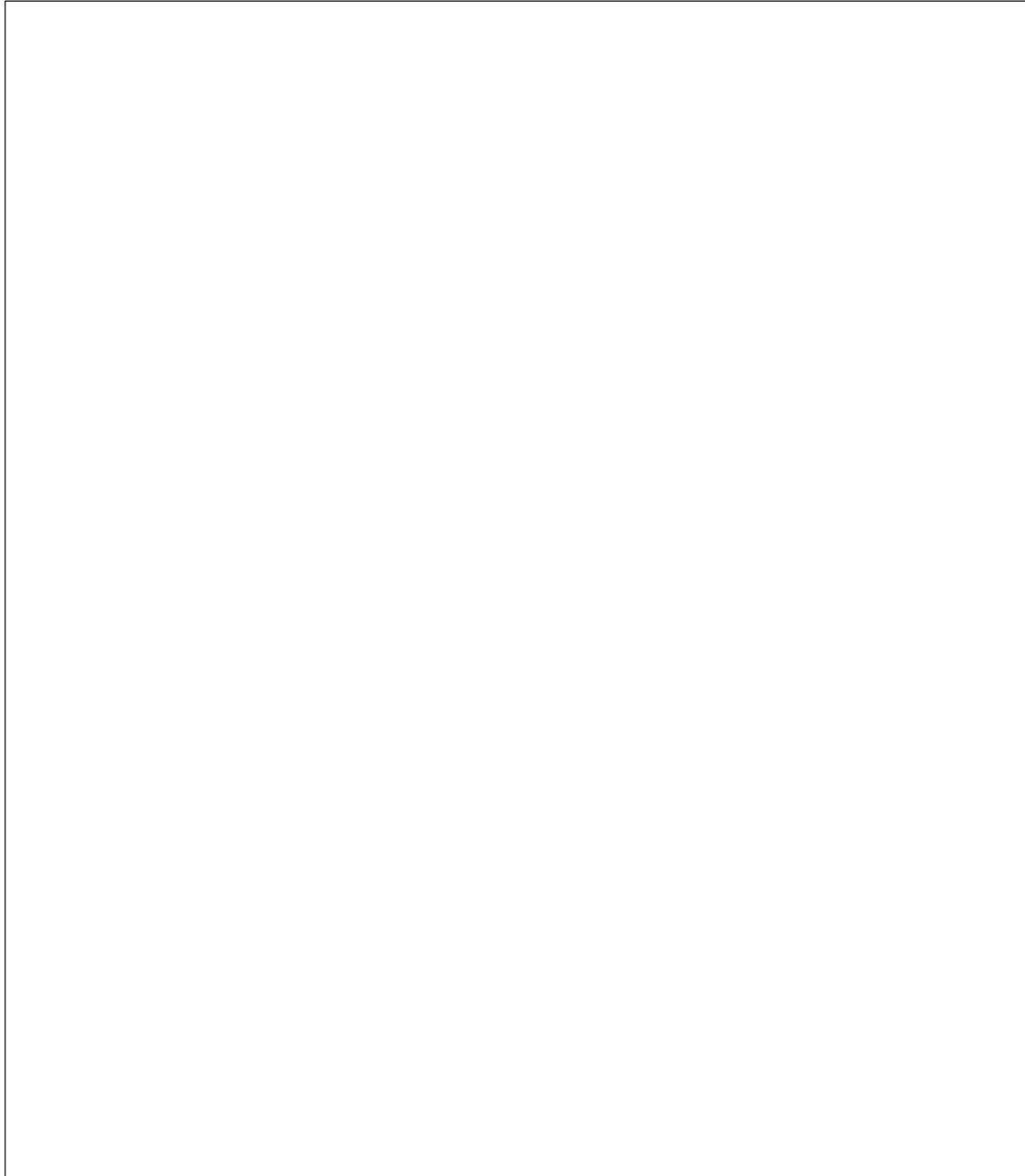
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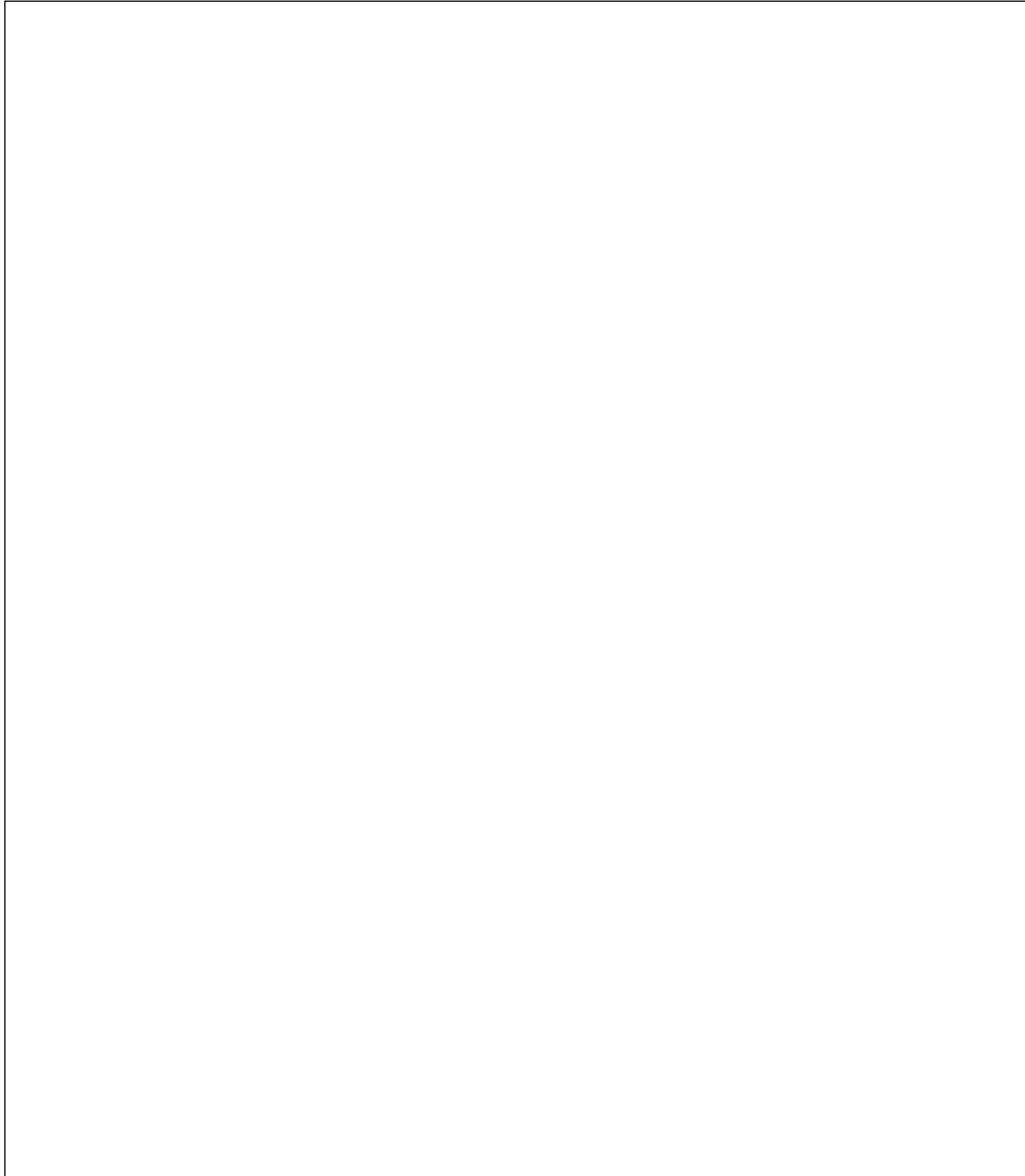
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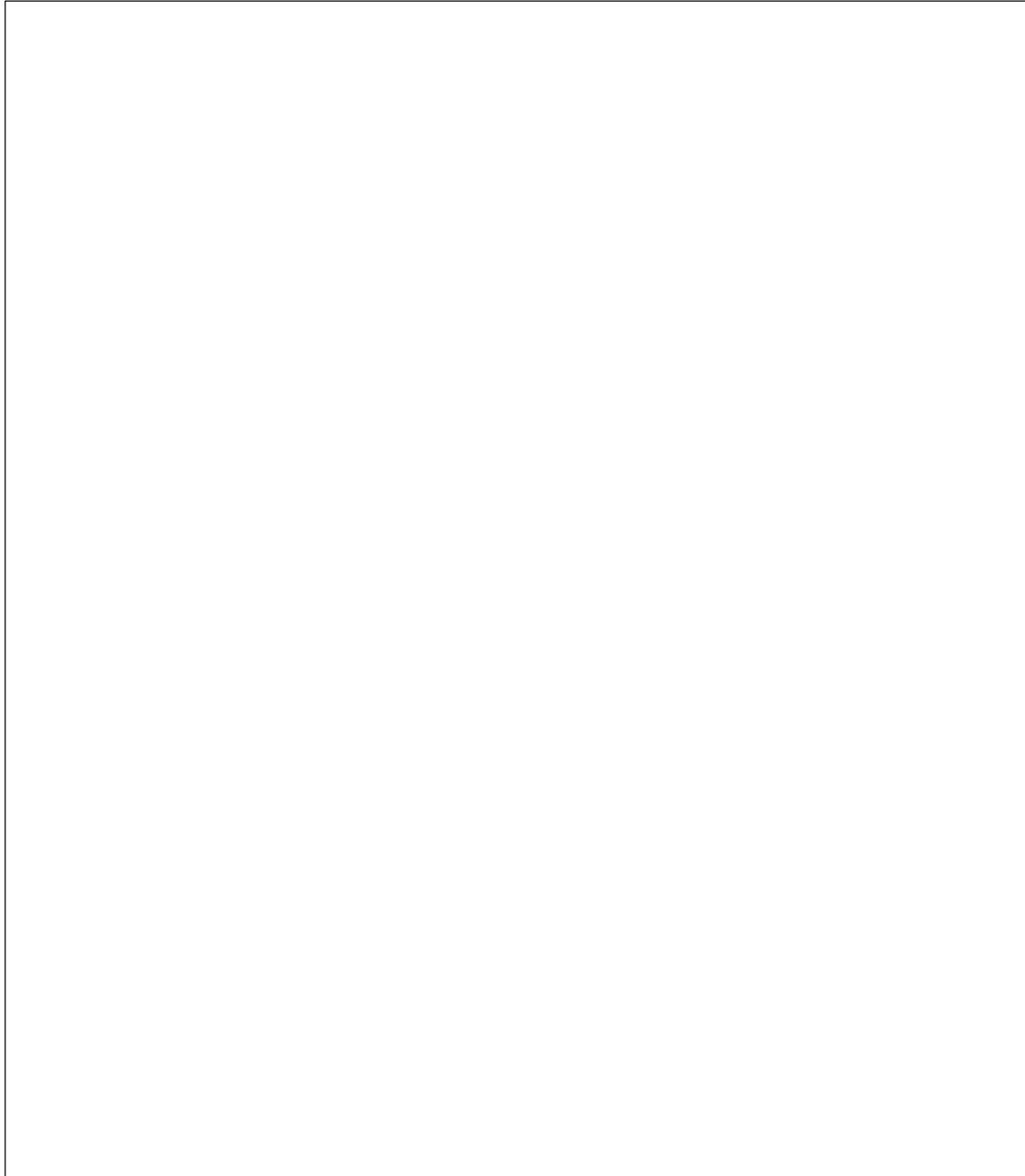
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**Learning
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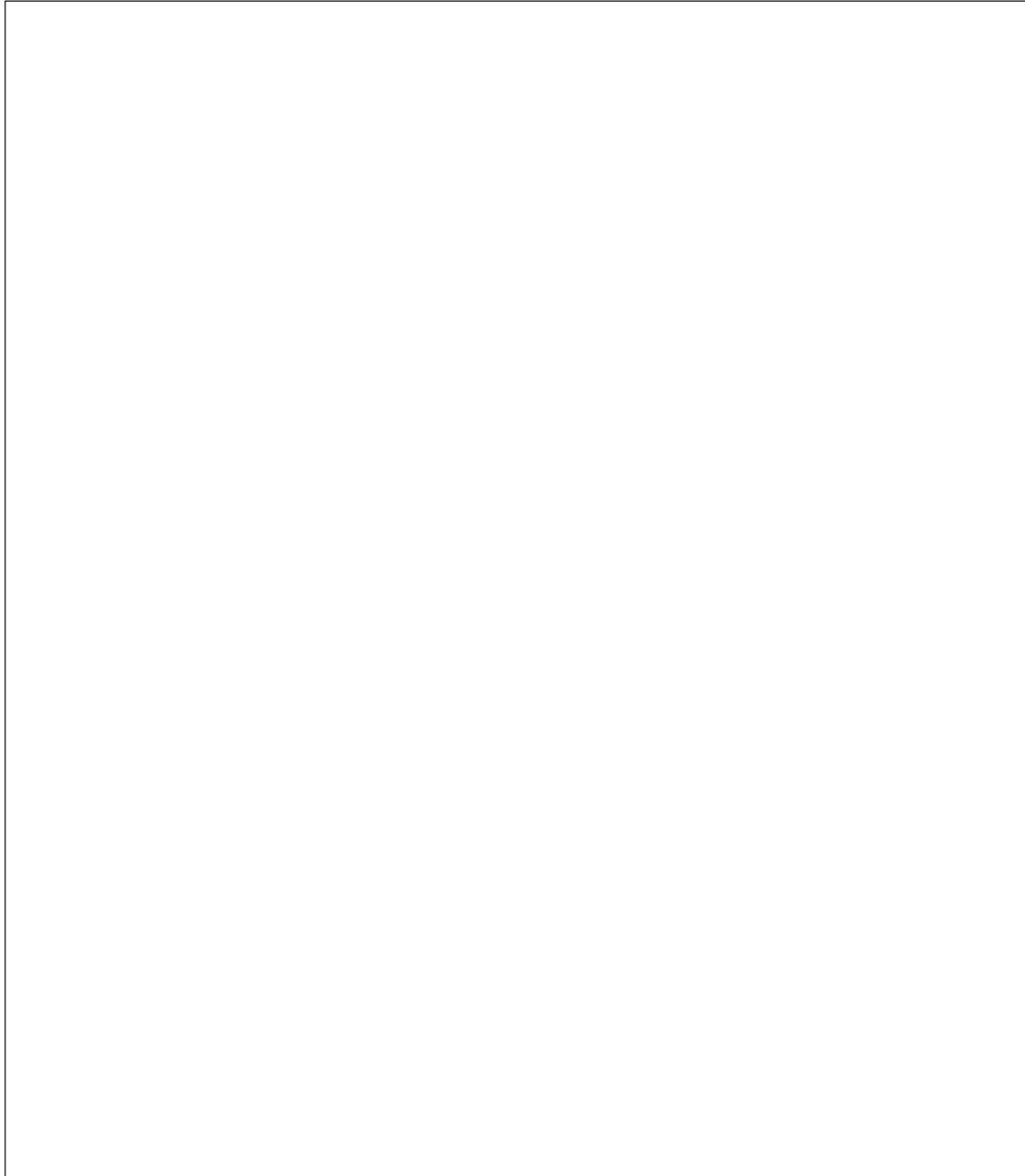
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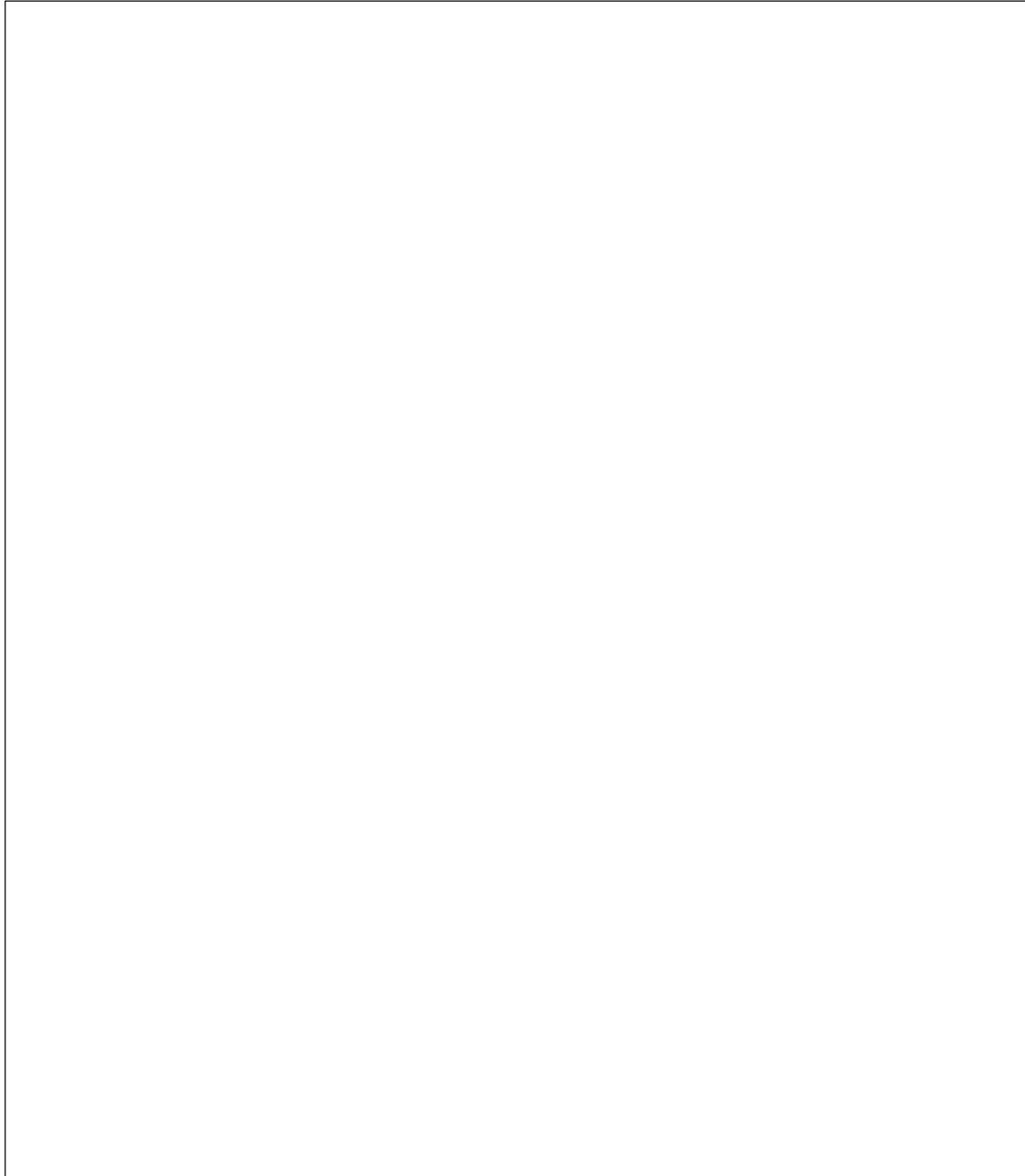
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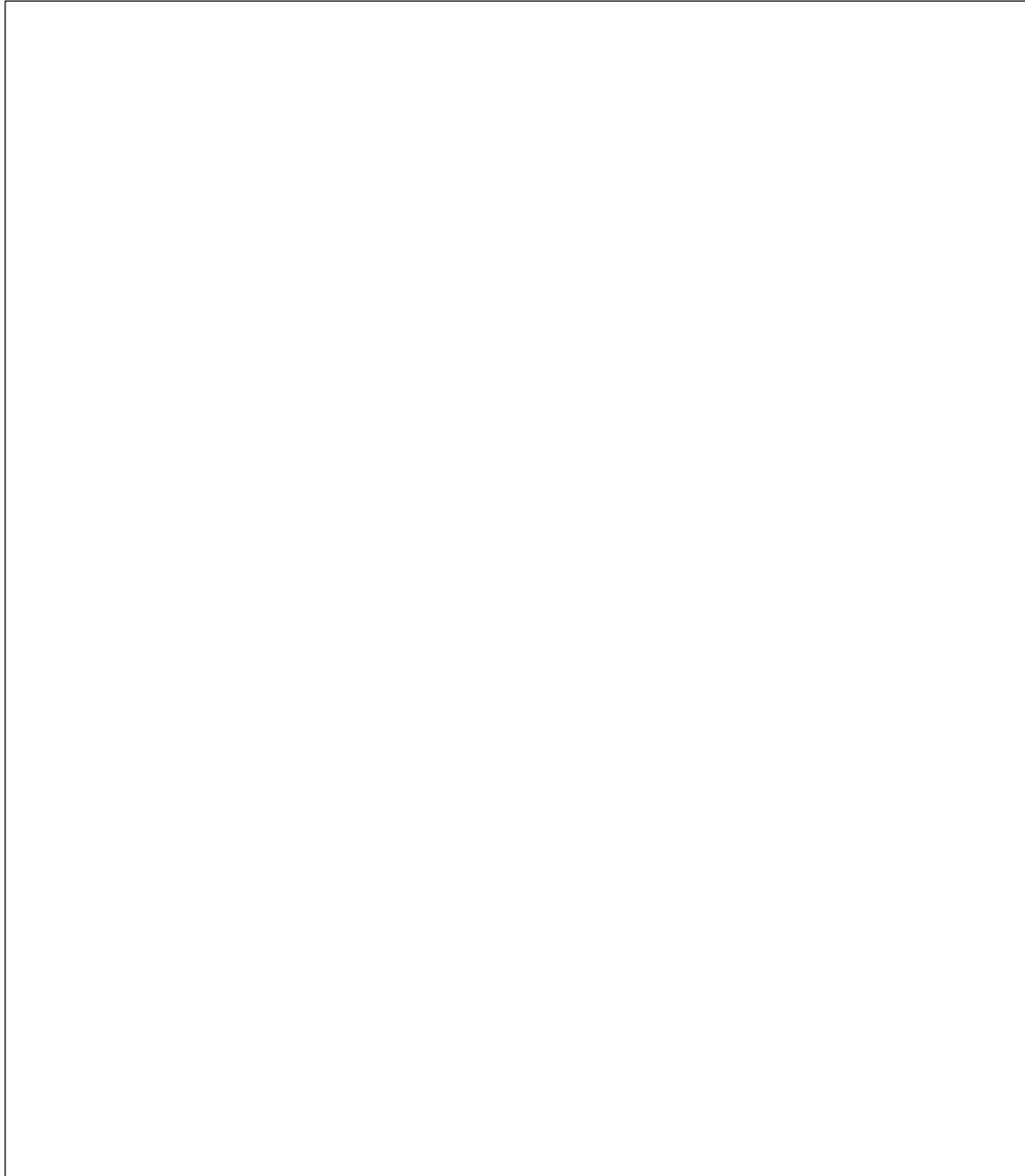
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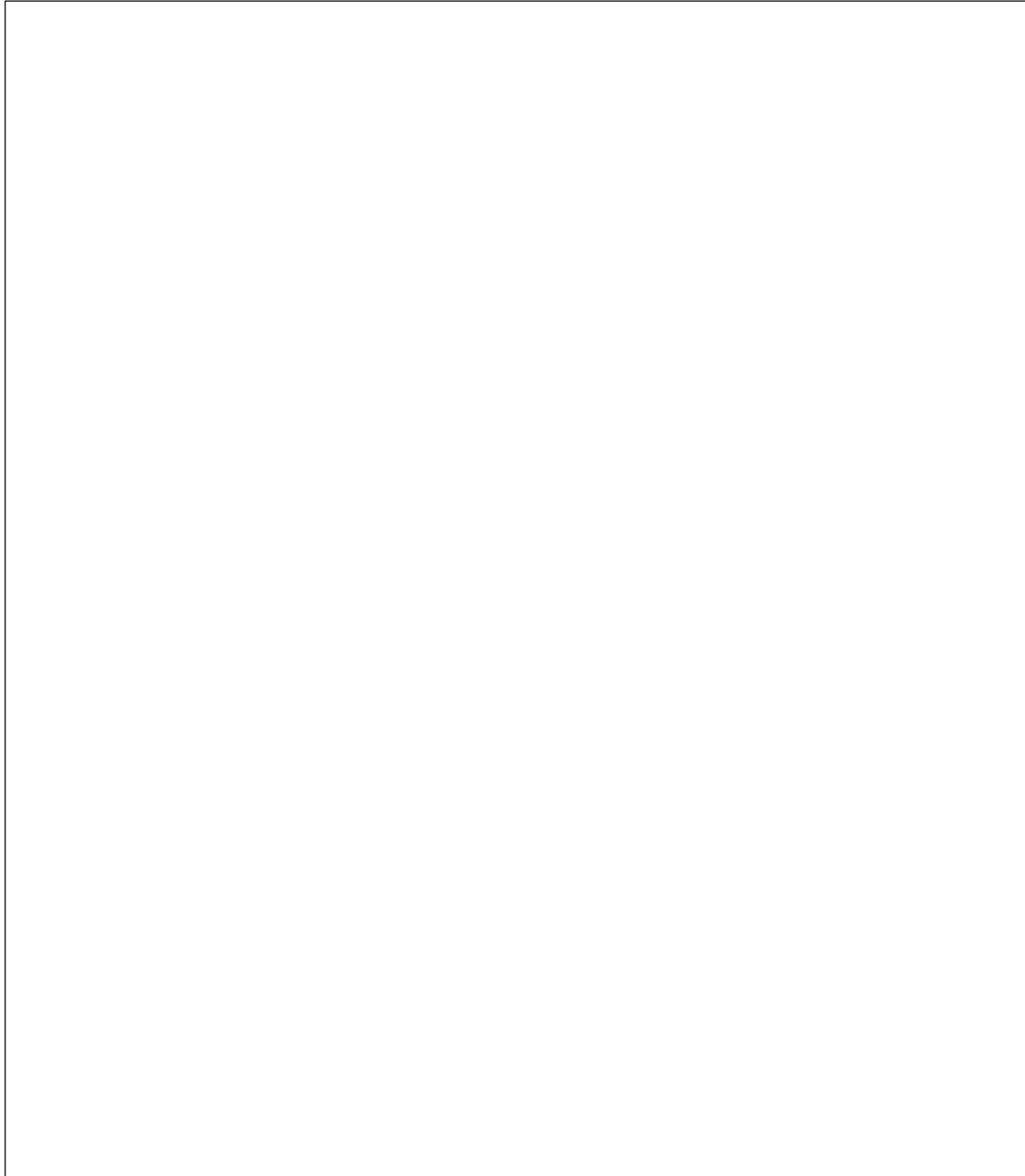
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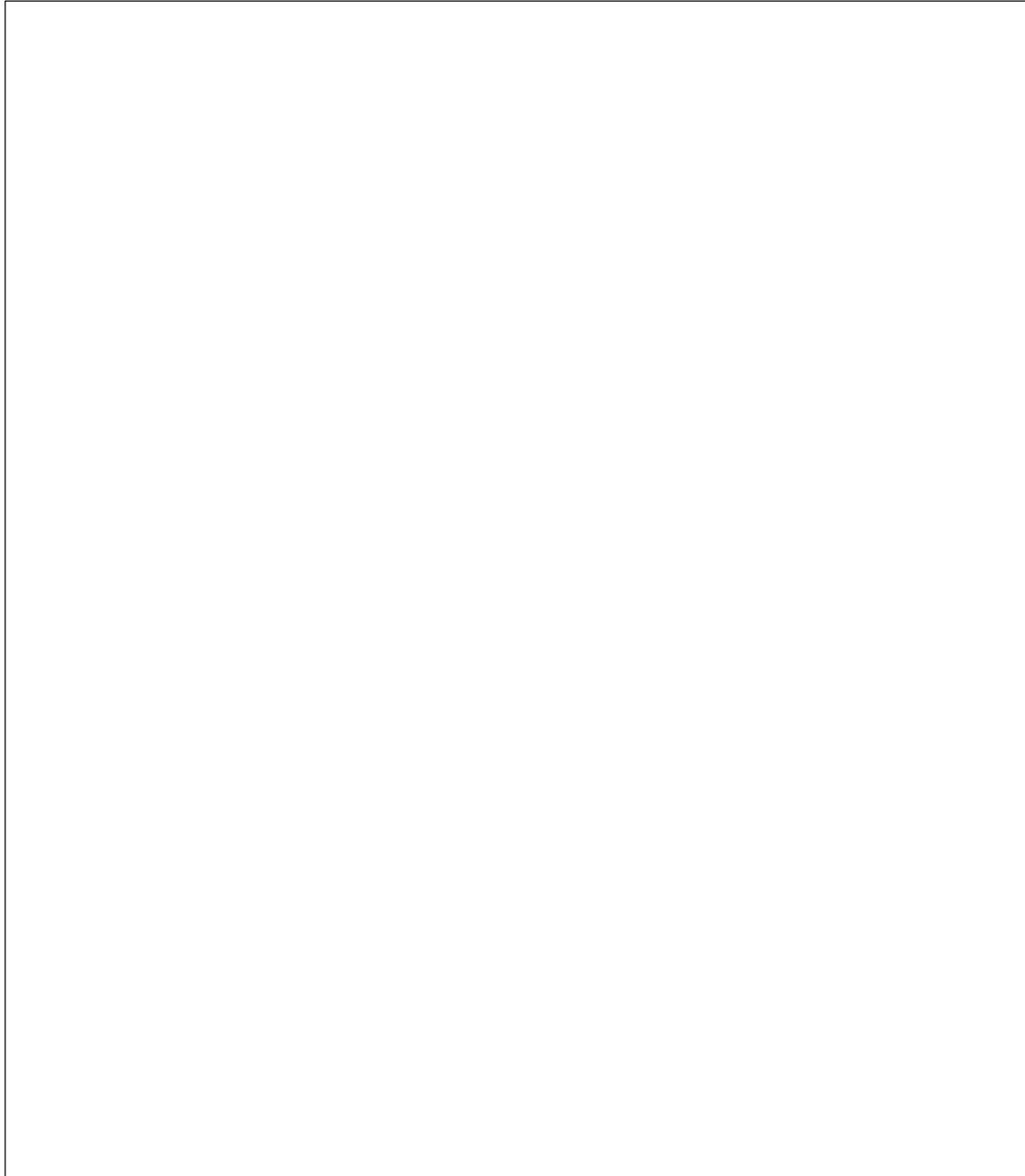
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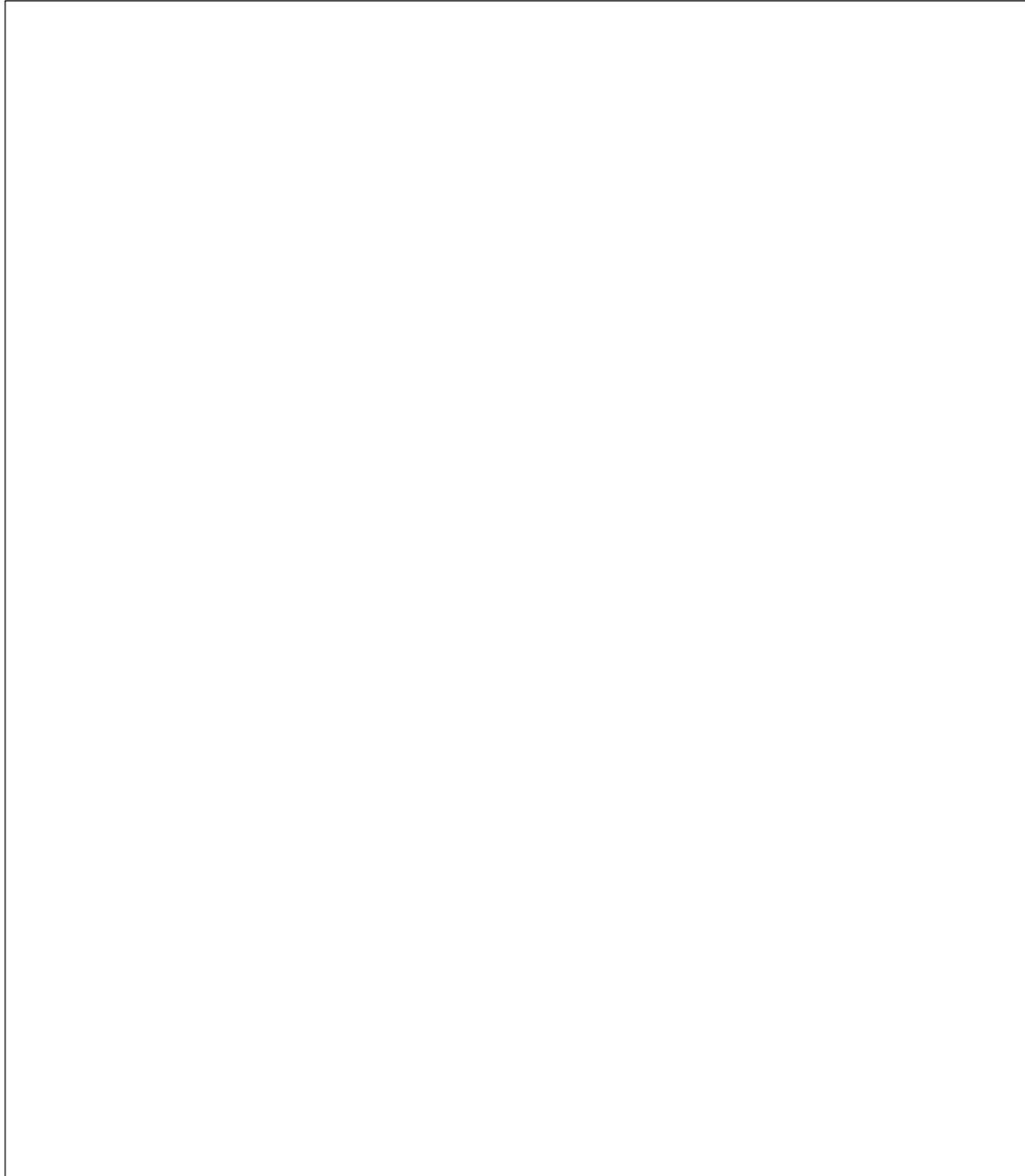
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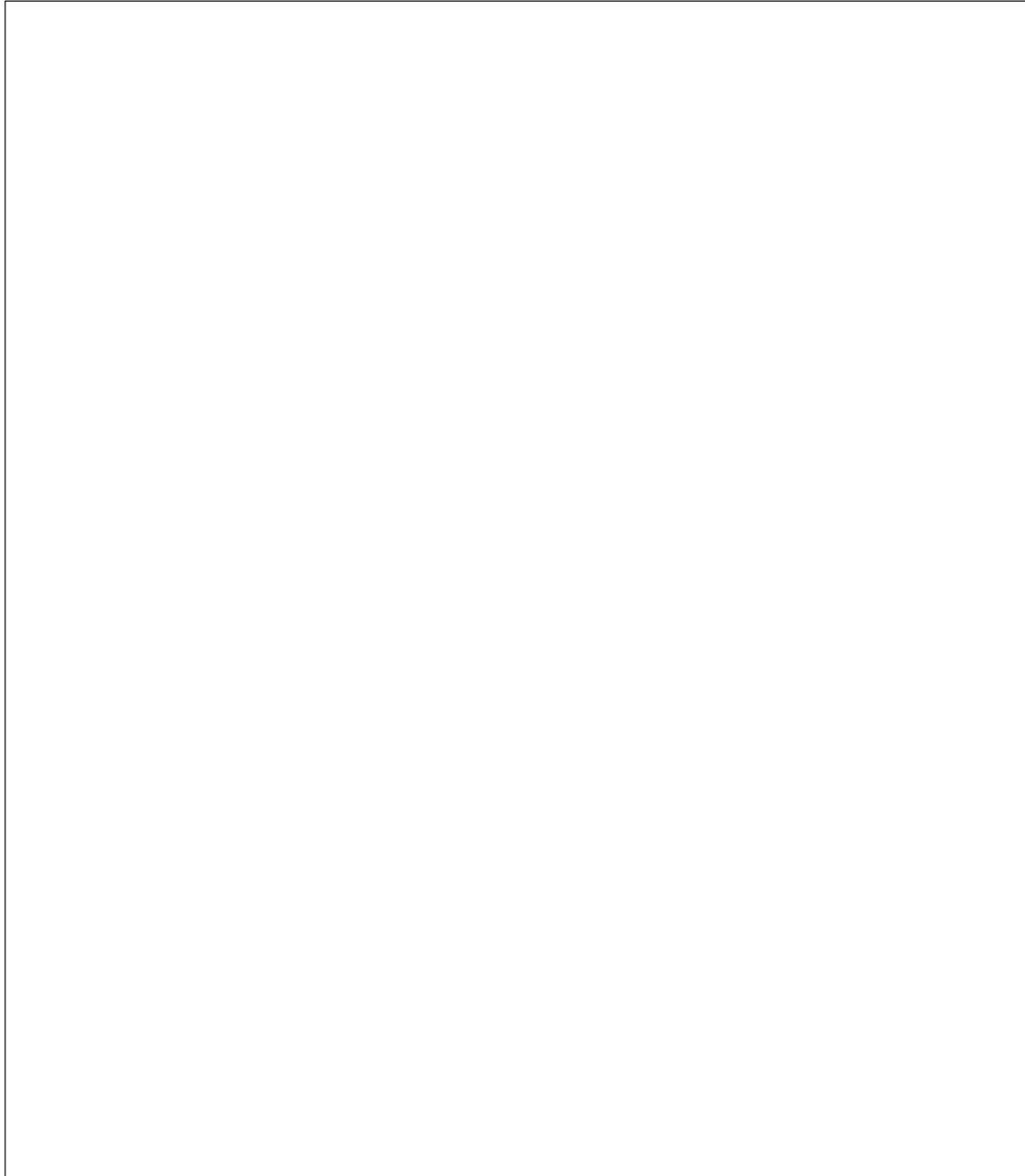
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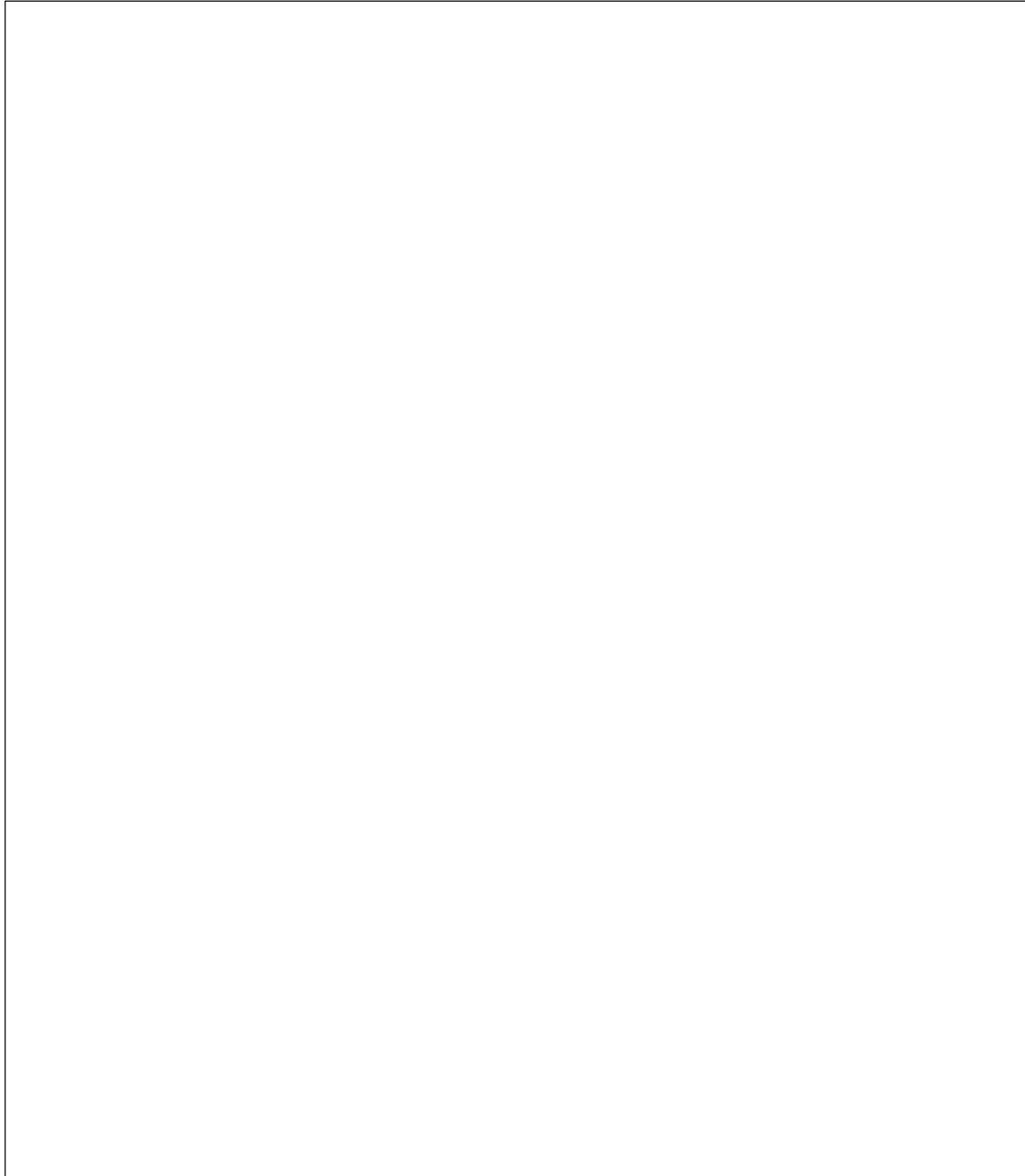
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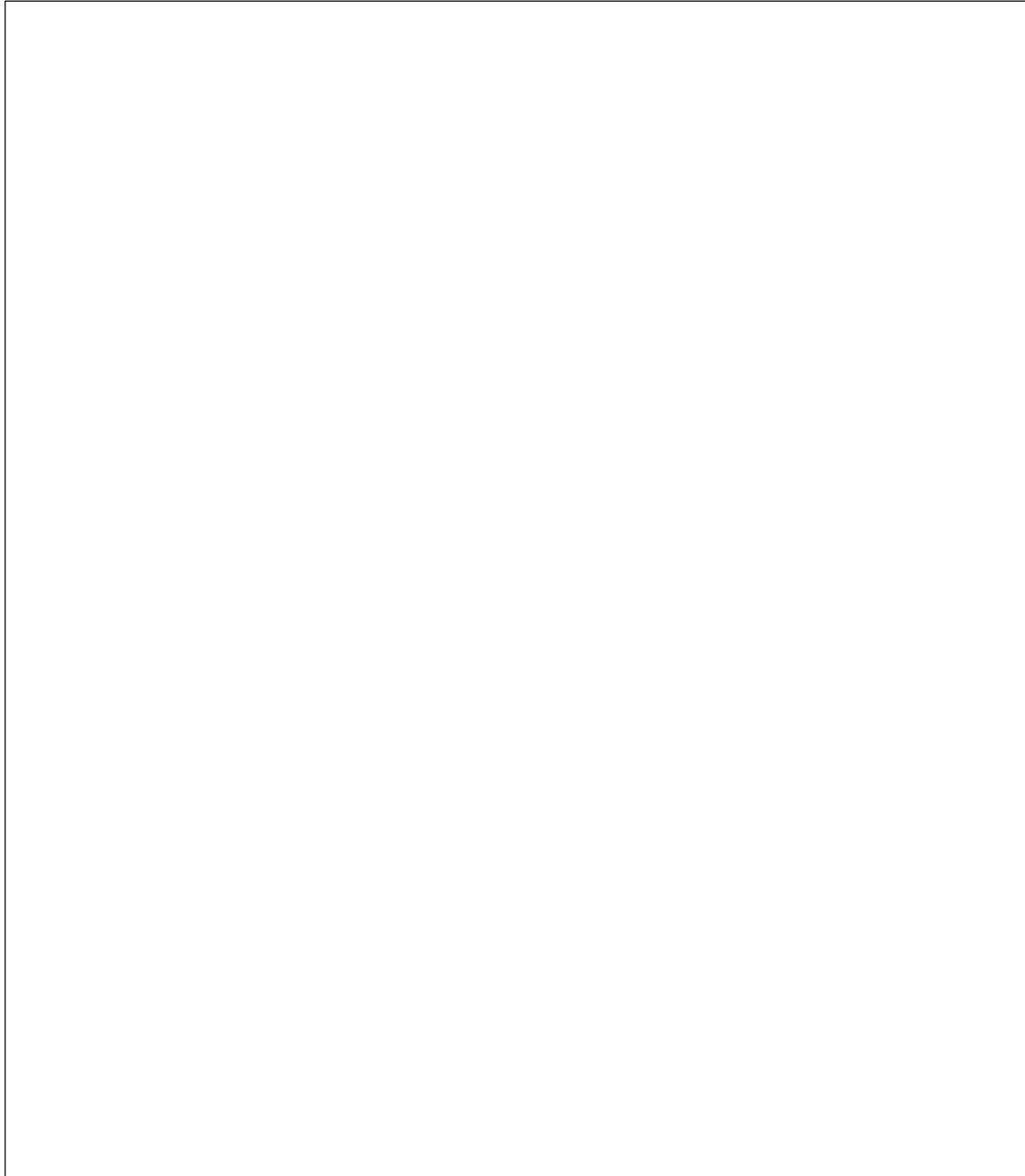
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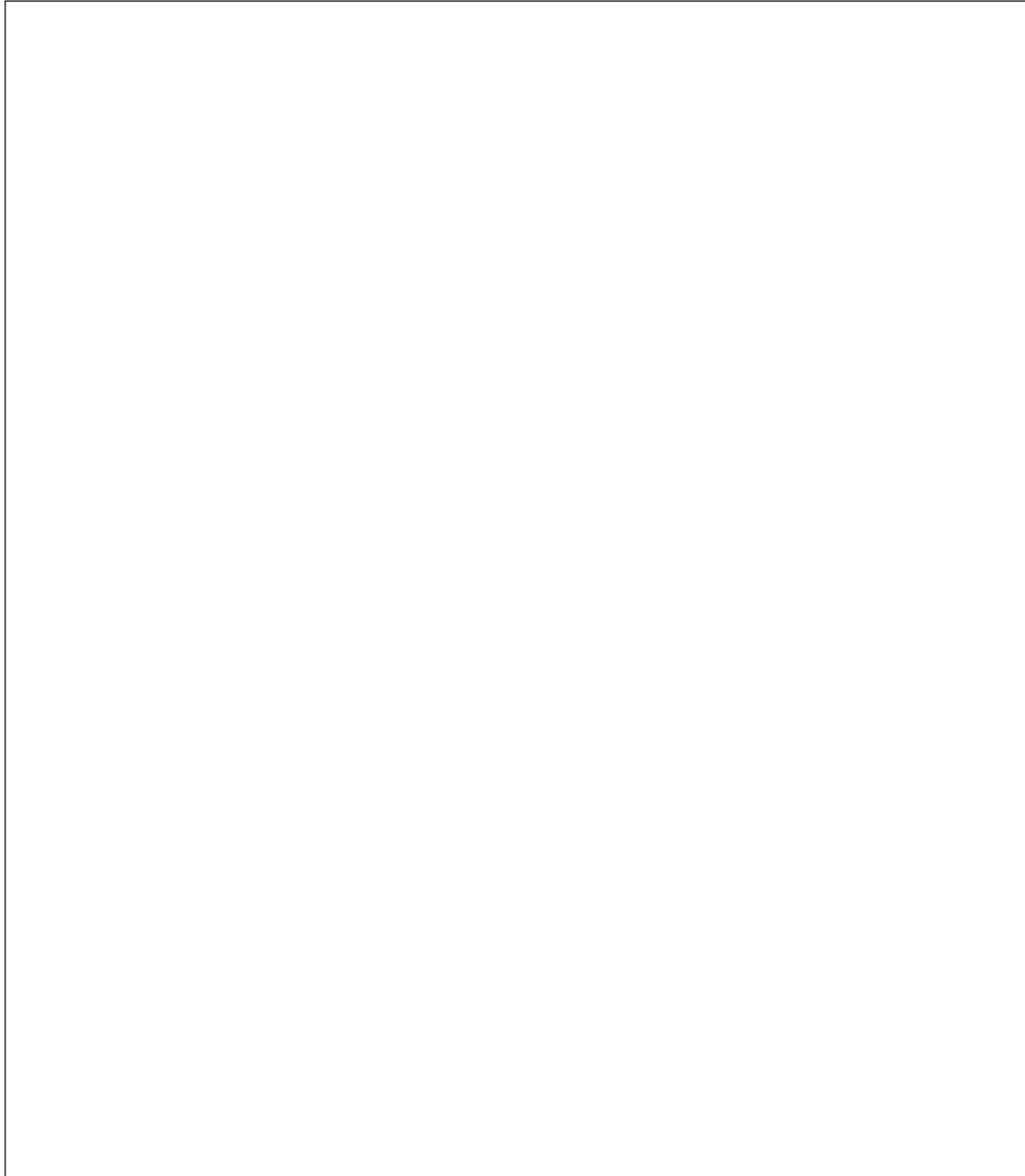
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